

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

CHAPTER 106

HEALTH CARE FACILITIES

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Subchapter 1

Certificate of Need

37.106.101 DEFINITIONS (1) For the purpose of this subchapter:

(a) "Current state health plan" means the compilation of components containing guidelines for determining need for health care facilities and services subject to certificate of need review that is most recently adopted by the governor and a statewide health coordinating council appointed by the governor; a separate component adopted by the statewide health coordinating council and the governor for a single type of service or facility is part of the current state health plan.

(b) "Health service" means a major subdivision, as determined by the department, within diagnostic, therapeutic, or rehabilitative areas of care, including alcohol, drug abuse, and mental health services, that may be provided by a health care facility. Specific treatments, tests, procedures, or techniques in the provisions of care do not, by themselves, constitute a health service.

(i) "Health service" includes radiological diagnostic health services offered in, at, through, by, or on behalf of a health care facility, including services offered in space leased or made available to any person by a health care facility except when the capital expenditure for the addition to or replacement of the same service is less than \$750,000.

(c) "Major medical equipment" is defined as provided in 50-5-101, MCA, and the department interprets the phrase "substantial sum of money" in that definition to mean "more than \$750,000".

(d) "Swing bed" means a licensed hospital or medical assistance facility bed that is also certified for the provision of long-term care pursuant to 42 CFR 482.66.

(2) The following terms appear in the Montana Code Annotated, are not defined in the statutes, and are interpreted by the department to mean the following:

(a) The phrase "enforceable capital expenditure commitment", as used in 50-5-305, MCA, means an obligation incurred by or on behalf of a health care facility when:

(i) an enforceable contract is entered into by such facility or its agent for the construction, acquisition, lease or financing of a capital asset;

(ii) a formal internal commitment of funds by such a facility which constitutes a capital expenditure; or

(iii) in the case of donated property, the date on which the gift vested.

(b) The phrase "office of a private physician, dentists or other physical or mental health care professionals, including chemical dependency counselors", used in 50-5-301, MCA, as an exception from the definition of "health care facility", to mean the private offices of those professionals, whether practicing individually or as a group, and associated facilities that are:

(i) located on the premises of the professional's offices;

(ii) operated as an integral part of the professional's private practice; and

(iii) primarily available only to the professionals whose offices are located on the premises. Such facilities may include outpatient services and observation beds, but may not include inpatient services. (History: subsection (2) is advisory only but may be a correct interpretation of the law; Sec. 50-5-103 and 50-5-302, MCA; IMP, Sec. 50-5-101, 50-5-301, 50-5-302, 50-5-304, 50-5-305, 50-5-306, 50-5-307, 50-5-308, 50-5-309, 50-5-310, 50-5-316 and 50-5-317, MCA; NEW, 1979 MAR p. 1670, Eff. 12/28/79; AMD, 1983 MAR p. 732, Eff. 7/1/83; AMD, 1987 MAR p. 1074, Eff. 7/17/87; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

Rule 02 reserved

37.106.103 LONG-TERM CARE: WHERE ALLOWED (1) A health care facility, as defined in 50-5-301, MCA, may provide long-term care only if:

(a) it is licensed to provide the level of care in question; or

(b) it has received certificate of need approval pursuant to ARM 37.106.126 for the establishment of swing beds, is certified to provide long-term care in such swing beds, and the provision of long-term care is limited to such swing beds.

(2) A hospital may provide long-term care only if:

(a) it has received certificate of need approval from the department for the establishment of swing beds, is certified to provide long-term care in such swing beds, and the provision of long-term care is limited to such swing beds; or

(b) whenever the number of beds in which long term care is provided is five or fewer, the facility is certified to provide long-term care in those beds as swing beds, and the provision of long-term care is limited to such swing beds. (History: Sec. 50-5-103 and 50-5-302, MCA; IMP, Sec. 50-5-201 and 50-5-301, MCA; NEW, 1986 MAR p. 38, Eff. 1/17/86; AMD, 1987 MAR p. 1074, Eff. 7/17/87; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

Rules 04 and 05 reserved

37.106.106 SUBMISSION OF LETTER OF INTENT (1) Any person proposing an activity other than those to which (3) and (4) below apply and that is subject to review under 50-5-301, MCA, and not exempt under 50-5-309, MCA, shall submit to the department a letter of intent that contains the following:

- (a) name of applicant;
- (b) proposal title;
- (c) a detailed statement outlining whether the proposal involves:
 - (i) the addition of a new service, and, if so, an estimate of the annual operating and amortization expenses required to provide it;
 - (ii) the construction, development, or other establishment of a health care facility that did not previously exist or is being replaced;
 - (iii) the construction, remodeling, renovation, or replacement of a health care facility requiring a capital expenditure of more than \$1,500,000;
 - (iv) a change in bed capacity through an increase in the number of beds or a relocation of beds from one facility or site to another;
 - (v) the expansion of a geographic service area of a home health agency;
 - (vi) the use of hospital beds to provide nursing or intermediate developmental disability care and, if so, the number of beds involved; or
 - (vii) other (explain);
- (d) a narrative summary of the proposal;
- (e) an itemized estimate of proposed capital expenditures, including a list of proposed major medical equipment with a description of each and the cost of the construction of any building, including remodeling, necessary to house it;
- (f) anticipated methods and terms of financing the proposal;
- (g) effects of the proposal on the cost of patient care in the service area affected;
- (h) projected dates for commencement and completion of the proposal;
- (i) the proposed geographic area to be served;
- (j) an itemized estimate of increases in annual operating and/or amortization expenses resulting from new health services;

(k) the location of the proposed project, including its street address;

(l) if the person desires comparative review of their proposal with that of another applicant, the name of the other applicant;

(m) the name of the person to contact for further information, including city, state, zip code and telephone number; and

(n) the dated signature of an authorized representative of the applicant.

(2) For letters of intent submitted under (1) of this rule, in determining whether or not a capital expenditure for equipment is over \$750,000, the department will review the list submitted by the applicant pursuant to (1)(e) of this rule and will include in the cost calculation the cost of any support equipment necessary to the proper function of the item of major medical equipment in question.

(3) Any person or persons desiring to acquire or enter into a contract to acquire 50% or more of an existing health care facility (whether through a single transaction or by adding to a portion already owned) must submit to the department a written letter noting intent to acquire the facility and containing the following:

(a) the services currently provided by the health care facility and the present and proposed bed capacity of the facility;

(b) any additions, deletions, or changes in such services which will result from the acquisition; and

(c) the projected cost of care at the facility compared to the cost under the current ownership, as well as any other factors which may cause an increase in the cost of care.

(4) Any person proposing to increase or relocate from one facility or site to another no more than 10 beds or 10% of the licensed beds must submit to the department a letter of intent containing the following as one of the conditions that 50-5-301(1)(b), MCA, requires to be met in order to be exempt from certificate of need review for the change:

(a) the licensed capacity of the facility, the number of beds to be added or relocated, and in the latter case, the facilities or sites in question; and

(b) the cost of the addition or relocation and its likely effect on the cost of patient care.

(5) As required by 50-5-302(2), MCA, persons who acquire health care facilities but who do not file the notice of intent required by (3) of this rule are subject to certificate of need review for the purposes of this subchapter. (History: Sec. 50-5-103 and 50-5-302, MCA; IMP, Sec. 50-5-301 and 50-5-302, MCA; NEW, 1979 MAR p. 1670, Eff. 12/28/79; AMD, 1983 MAR p. 732, Eff. 7/1/83; AMD, 1984 MAR p. 27, Eff. 1/13/84; AMD, 1985 MAR p. 602, Eff. 5/31/85; AMD, 1987 MAR p. 1074, Eff. 7/17/87; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.107 SUBMISSION OF APPLICATIONS (1) An application will be accepted only after submission of a letter of intent.

(2) The deadline set by the department for submission of an application will not exceed 90 days unless the department and all affected applicants agree to a longer period.

(3) No application for a proposal will be accepted earlier than the deadline set by 50-5-302(5), MCA, for receipt of a letter of intent requesting comparative review with that proposal, with the exception of a proposal for which a letter of intent was submitted requesting comparative review with an earlier proposal.

(4) The application must contain, at a minimum, the information as specified by the department pursuant to ARM 37.106.133 and 37.106.134.

(5) The original and six copies of the application must be submitted to the department.

(6) If the application is received without the full fee (\$500 or 0.3% of the application's projected capital expenditure, whichever is larger), it will not be considered submitted to the department until the date the full fee due is received by the department. The fee must be paid by check made out to the department of public health and human services.

(7) Within 20 working days after receipt of an application, if the application is determined to be incomplete, the department shall notify the applicant in writing by mail of that fact and of the specific information that is necessary to complete the application. The department shall also indicate a time, which may be no less than 15 calendar days, within which the department must receive the additional information requested. Within 15 working days after receipt of the additional information, the department shall determine whether the application is complete.

(8) If an applicant does not submit adequate information within the time specified, their application will be considered withdrawn.

(9) If the applicant materially changes the proposal or the capital expenditures projected are increased by 15% or \$150,000, whichever is greater, after the department declares the application complete, the department may cease review of the original application and require the applicant to begin the process again by filing a new letter of intent for the revised proposed project if it desires a certificate of need for it. If, after the department gives the applicant notice that the department considers the original proposal so altered that the review process must begin again, the department will continue on the original review schedule if the applicant notifies the department that it chooses to have review continue on the original application, rather than to commence a new review process on the revised application.

(10) The department may, in its discretion, conduct a comparative review of competing applications if such applications are being reviewed concurrently, if such comparative review can be conducted consistently with all other time constraints imposed by Title 50, chapter 5, part 3, MCA, and this subchapter, and if, as required by 50-5-302(12), MCA, they pertain to similar types of facilities or equipment affecting the same health service area, subject to the limitation that a proposal for which a letter of intent is submitted requesting comparative review, pursuant to 50-5-302(5), MCA, will not be reviewed comparatively with a proposal for which a letter of intent is filed after the 30-day deadline referred to in 50-5-302(5), MCA. (History: Sec. 2-4-201, 50-5-103 and 50-5-302, MCA; IMP, Sec. 50-5-302 and 50-5-310, MCA; NEW, 1983 MAR p. 732, Eff. 7/1/83; AMD, 1984 MAR p. 27, Eff. 1/13/84; AMD, 1985 MAR p. 602, Eff. 5/31/85; AMD, 1987 MAR p. 1074, Eff. 7/17/87; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.108 NOTICE OF ACCEPTANCE OR EFFECTIVE WITHDRAWAL OF APPLICATION (1) When an application is determined to be complete, the department shall issue a letter of acceptance.

(2) When an application is determined to be incomplete after the applicant has been given an opportunity to submit additional information, the department will issue the applicant a letter declaring the application is effectively withdrawn.

(History: Sec. 50-5-103 and 50-5-302, MCA; IMP, Sec. 50-5-302, MCA; NEW, 1979 MAR p. 1670, Eff. 12/28/79; AMD, 1983 MAR p. 732, Eff. 7/1/83; AMD, 1985 MAR p. 602, Eff. 5/31/85; AMD, 1987 MAR p. 1074, Eff. 7/17/87; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

Rules 09 through 11 reserved

37.106.112 INFORMATIONAL HEARING PROCEDURES (1) Any affected person may request an informational hearing to be held during the course of the review period by writing to the department. The department may also hold a hearing on its own initiative.

(2) Whenever an application is received by the department, the department will publish a notice of that fact in a newspaper of general circulation in the area to be served by the proposal, unless the application is subject to comparative review with another, in which case the newspaper notice will be published after receipt of all of the applications to be comparatively reviewed. A hearing request must be received by the department within 30 calendar days after the date the newspaper notice is published.

(3) Notice of the informational hearing will be given at least 14 calendar days before the hearing date by the following means:

(a) Written notice must be sent by mail to the person requesting the hearing, the applicant, and all other applicants assigned for comparative review with the applicant, if any. Other persons who have requested notice will be notified by mail.

(b) Notice to all other affected persons will be by legal advertisement in a newspaper with general circulation in the service area affected by the application.

(c) The notice must indicate:

- (i) the date of the hearing;
- (ii) the time of the hearing;
- (iii) the location of the hearing; and
- (iv) the person to whom written comments may be sent prior to the hearing.

(4) Whenever a hearing is held for an application which is being comparatively reviewed with another application, the hearing will be conducted as a joint hearing on all such applications.

(5) Any person may comment during the hearing, and all comments made at the hearing will be tape-recorded and retained by the department until the project is completed or the certificate of need expires.

(6) The hearing will be informal, and neither the Montana Administrative Procedure Act nor the Rules of Civil Procedure will apply.

(7) Any person wishing to make a factual allegation at the hearing must first swear or affirm that his testimony is true.

(8) No person other than the department may conduct reasonable questioning of any person who makes relevant factual allegations. (History: Sec. 50-5-103 and 50-5-302, MCA; IMP, Sec. 50-5-302, MCA; NEW, 1985 MAR p. 602, Eff. 5/31/85; AMD, 1987 MAR p. 1074, Eff. 7/17/87; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.113 CRITERIA AND FINDINGS (1) The criteria listed in (a) through (k) below are statutory criteria required by 50-5-304, MCA, and will be considered by the department in making its decision:

- (a) the degree to which the proposal being reviewed:
 - (i) demonstrates that the service is needed by the population within the service area defined in the proposal;
 - (ii) provides data that demonstrates the need for services contrary to the current state health plan, including but not limited to waiting lists, projected service volumes, differences in cost and quality of services, and availability of services; or
 - (iii) is consistent with the current state health plan.
- (b) the need that the population served or to be served by the proposal has for the services;
- (c) the availability of less costly quality-equivalent or more effective alternative methods of providing the services;
- (d) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;
- (e) the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided;
- (f) the consistency of the proposal with joint planning efforts by health care providers in the area;
- (g) the availability of resources, including health manpower, management personnel, and funds for capital and operating needs, for the provision of services proposed to be provided and the availability of alternative uses of the resources for the provision of other health services;
- (h) the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;
- (i) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project;
- (j) the distance, convenience, cost of transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal; and

(k) in the case of a project to add long-term care facility beds:

(i) the need for the beds that takes into account the current and projected occupancy of long-term care beds in the community;

(ii) the current and projected population over 65 years of age in the community; and

(iii) other appropriate factors.

(2) In addition to the statutory criteria cited in (1) above, the department will consider the following in making its decision:

(a) the equal access the medically underserved population, as well as all other people within the geographical area documented as served by the applicant, will have to the subject matter of the proposal;

(b) whether patients will experience problems including, but not limited to, cost, availability, or accessibility in obtaining care of the type proposed in the absence of the proposed new service. (History: Sec. 50-5-103 and 50-5-304, MCA; IMP, Sec. 50-5-304, MCA; NEW, 1979 MAR p. 1670, Eff. 12/28/79; AMD, 1983 MAR p. 732, Eff. 7/1/83; AMD, 1985 MAR p. 602, Eff. 5/31/85; AMD, 1987 MAR p. 1074, Eff. 7/17/87; AMD, 1988 MAR p. 2484, Eff. 11/24/88; AMD, 1994 MAR p. 1296, Eff. 5/13/94; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.114 DEPARTMENT DECISION (1) If the department fails to reach and issue a decision within the deadlines established by 50-5-302, MCA, a certificate of need will not automatically issue unless the delay is due to an abuse of discretion by the department and the applicant obtains a writ of mandamus ordering the department to issue the certificate.

(2) If the certificate of need is issued with conditions, the conditions must be directly related to the project under review, and to the criteria listed in 50-5-304, MCA, and ARM 37.106.113, and cannot increase the scope of the project.

(3) The basis for the decision of the department must be expressed in written findings of fact and conclusions of law, which must be sent via certified mail to the applicant and all other applicants assigned for comparative review with the applicant, along with a notice of the right to a reconsideration hearing pursuant to 50-5-306, MCA, and the deadline for requesting such a hearing. The findings, conclusions, and notice will be made available, upon request, to others for cost.

(4) Notice, in summary form, of the department's decision, the right to request a reconsideration hearing, and the deadline for such a request will also be sent to each health care facility of the type affected by the application or applications in question within the geographic area affected by the application(s). (History: Sec. 50-5-103 and 50-5-302, MCA; IMP, Sec. 50-5-302 and 50-5-304, MCA; NEW, 1979 MAR p. 1670, Eff. 12/28/79; AMD, 1983 MAR p. 732, Eff. 7/1/83; AMD, 1985 MAR p. 602, Eff. 5/31/85; AMD, 1987 MAR p. 1074, Eff. 7/17/87; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.115 APPEAL PROCEDURES (1) Any affected person who requests a hearing to reconsider the department's decision must submit a check for \$500 to the department along with the request. No hearing will be scheduled or held unless the department has received the fee.

(2) Immediately after receipt of a request for a hearing, a copy of the request will be sent to all affected persons, as defined in 50-5-101, MCA, who participated in any informational hearing that was held concerning the affected proposal.

(3) Notice of the date and time of a reconsideration hearing will be sent to the affected person requesting the hearing and, if the applicant did not request the hearing, the applicant as well.

(4) If a hearing to reconsider a decision is requested, any affected person, other than the requestor of the hearing, who wishes to participate in the hearing must, at least two weeks after the date the request for hearing is received, submit a written notice of intent to participate to the department along with a check for \$500, unless the affected person is an applicant whose proposal was approved and is the subject of the hearing, in which case only the notice of intent must be received by the department.

(5) The fees required by (1) and (4) above must be paid by check made out to the department of public health and human services.

(6) Counsel for the department and the health planning staff may participate in the hearing to provide testimony and exhibits, and to cross-examine witnesses, but are not considered parties for the purposes of 2-4-613, MCA.

(7) A copy of any pre-hearing motion filed by an affected person must be served by mail upon the department and any other affected person participating in the hearing.

(8) The department's hearing officer may require the direct testimony of the witnesses of each affected person participating in the hearing to be in writing and filed prior to hearing with the department, with copies served upon the department and every other participating affected person.

(9) At the reconsideration hearing, the parties or their counsel will be given the opportunity to present written or oral evidence or statements concerning the department's action and the grounds upon which it was based.

(10) The department shall send the written findings of fact and conclusions of law that state the basis for its decision to all parties participating in the hearing. Any other person upon request may receive a copy for cost.

(11) The decision of the department following the reconsideration hearing shall be considered the department's final decision for the purpose of appealing the decision to district court.

(12) The hearing, any discovery, and other related matters are subject to the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, and ARM 1.3.215 through 1.3.225 and ARM 1.3.230 through 1.3.233.

(13) The department hereby adopts and incorporates by reference ARM 1.3.215 through 1.3.225 and ARM 1.3.230 through 1.3.233, which contain attorney general's model rules for contested cases, implementing the Montana Administrative Procedure Act. Copies of the rules may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951, phone: (406)444-9503. (History: Sec. 50-5-103 and 50-5-306, MCA; IMP, Sec. 50-5-306 and 50-5-310, MCA; NEW, 1979 MAR p. 1670, Eff. 12/28/79; AMD, 1983 MAR p. 732, Eff. 7/1/83; AMD, 1985 MAR p. 602, Eff. 5/31/85; AMD, 1987 MAR p. 1074, Eff. 7/17/87; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

Rules 16 through 19 reserved

37.106.120 DURATION OF CERTIFICATE: TERMINATION; EXTENSION

(1) The department may, after notice and opportunity for a hearing, suspend or revoke a certificate of need upon a finding that the holder of the certificate is in violation of the certificate of need law, this chapter, or the terms of the certificate of need. The notice and hearing provisions of the Montana Administrative Procedure Act (Title 2, chapter 4, part 6, MCA) will apply.

(2)(a) A holder of a certificate of need may submit to the department a written request for a 6-month extension of his certificate of need, for good cause. The request must set forth the reasons constituting good cause for the extension and must be received by the department by 5:00 p.m. on the expiration date if it is to be considered.

(b) Within 20 days after receipt of the request, the department must issue its written decision granting or denying the extension. The decision must be sent to the applicant by certified mail, and distributed at cost to others who request it.

(c) Reconsideration of the department's decision may be requested by the holder and will be granted if the requester:

(i) presents significant relevant information not previously considered by the department; or

(ii) demonstrates that there have been significant changes in factors or circumstances relied upon by the department in reaching its decision.

(d) "Good cause" for the purpose of (2)(a) includes, but is not limited to, emergency situations which prevent the recipient of the certificate of need from obtaining necessary financing, commencing construction, or implementing a new service.

(3) A certificate of need, once granted to an applicant, may not be transferred to another person. In addition to a transfer from one person to another, such a transfer will be considered to have taken place if the applicant to which the certificate was granted is an organization and there is a change of ownership of 50% or more of that organization. (History: Sec. 50-5-103, 50-5-302 and 50-5-305, MCA; IMP, Sec. 50-5-302 and 50-5-305, MCA; NEW, 1979 MAR p. 1670, Eff. 12/28/79; AMD, 1983 MAR p. 732, Eff. 7/1/83; AMD, 1985 MAR p. 602, Eff. 5/31/85; AMD, 1987 MAR p. 1074, Eff. 7/17/87; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.121 INCREASE IN CERTIFIED COST (1) The recipient of a certificate of need shall report to the department any increase in the cost of an approved project in excess of \$150,000 or 15% of the approved budget for the project, whichever is greater. Any cost increase that exceeds the foregoing threshold must be approved by the department. (History: Sec. 50-5-302, MCA; IMP, Sec. 50-5-106 and 50-5-301, MCA; NEW, 1979 MAR p. 1670, Eff. 12/28/79; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

Rules 22 through 25 reserved

37.106.126 SWING BEDS: REVIEW CRITERIA (1) A certificate of need may be issued to a hospital or medical assistance facility to establish swing beds only if, in addition to compliance with all other applicable provisions of 50-5-304, MCA, and ARM 37.106.113:

(a) existing licensed long-term care facilities in the service area, which provide the level of care proposed to be provided by the hospital or medical assistance facility, have an aggregate average occupancy level of at least 95% during the three years prior to the date of the application for certificate of need; and

(b) no more than 50% of the excess bed capacity of the hospital or medical assistance facility will be approved as swing beds. Excess bed capacity is the difference between the number of licensed beds in the facility and the average acute care occupancy level of the facility over the three years prior to the date of the application for certificate of need.

(2) The utilization of swing beds by a medical assistance facility is subject to certificate of need review only if, as required by 50-5-301(1)(c), MCA, the facility did not offer long-term care during the 12 months prior to the month the service is scheduled to commence and the service will add annual operating and amortization expenses of \$150,000 or more. (History: Sec. 50-5-304, MCA; IMP, Sec. 50-5-304, MCA; NEW, 1986 MAR p. 38, Eff. 1/17/86; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

Rules 27 through 32 reserved

37.106.133 CERTIFICATE OF NEED APPLICATION: INTRODUCTION
AND COVER LETTER

(1) It is suggested that the applicant contact the health planning program before completing and submitting the necessary information. If an early contact is made, the applicant will be made aware of what will be required in specific cases before a formal application is completed and submitted.

(2) The applicant must send a cover letter, containing the information included in the original letter of intent with any pertinent revisions, to the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. The cover letter must accompany the original and each of the six copies of the information required by ARM 37.106.134. (History: Sec. 2-4-201 and 50-5-302, MCA; IMP, Sec. 50-5-302, MCA; NEW, 1984 MAR p. 27, Eff. 1/13/84; AMD, 1987 MAR p. 1074, Eff. 7/17/87; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.134 CERTIFICATE OF NEED APPLICATION: REQUIRED INFORMATION The following must be included in a certificate of need application:

(1) An explanation of the need for the facility or service, including the following information:

(a) the geographic area the proposed project will serve and the criteria being used for determining this service area;

(b) the current population of that service area (identify the source of information);

(c) the five-year projected population of that service area (identify the source of information);

(d) the percent of the population in that service area expected to be served;

(e) in terms of age, ethnic background and economic status, a description of the specific population which will be served by the proposed new institution or service. The applicant shall indicate the number of people matching this description in the service area (general public should be indicated if the facility is for non-specific population);

(f) an explanation of current and projected future trends in health care which might affect facility usage which were given consideration in the development of this project (identify source of information);

(g) a patient origin study for the last three years of operation;

(h) why the service or institution is needed in the identified service area;

(i) the purposes and goals of the project;

(j) whether there is a waiting list of persons desiring the proposed services. If so, a copy of the list must be provided.

(2) A description of the project's accessibility to the public. In particular, the following information must be included:

(a) the location of the proposed facility;

(b) the manner in which the architectural plan promotes access for the physically handicapped;

(c) other health care institutions which serve this area or portions thereof and provide similar services to those proposed in this application;

(d) if there are no similar services in the area, the nearest facility or facilities providing these services must be identified.

(3) A discussion of planning and environmental considerations, including the following information:

(a) an explanation of how the proposed service or facility is compatible with the current state health plan (a copy of which may be obtained from the Department of Public Health and Human Services, Health Policy Services Division, Health Systems Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951). If it is not compatible, an explanation of why it should be approved must be included;

(b) whether a short, long-range, master plan or capital expenditure plan is available for the facility. If so, a copy must be provided. The applicant shall also provide applicable city, county or regional land use, zoning, transportation, utilities or parking plans;

(c) a description of existing or proposed working relationships or joint planning efforts with other providers or services in the community or service area. If there are no such efforts, an explanation must be provided;

(d) whether the affected consumer/provider and related groups in the service area have indicated support for the proposal (agencies, groups, and their reactions must be listed);

(e) a discussion of environmental considerations, including architectural compatibility, waste disposal, traffic impacts, economic and social impacts on the area, etc.

(4) A discussion of the organizational aspects of the project, including the following information:

(a) the type of organization or entity responsible for the day-to-day operation of the facility (e.g., state, county, city, federal, hospital district, church related, nonprofit corporation, individual, partnership, business corporation);

(b) whether the controlling organization leases the physical plant from another organization. If so, the name and type of organization that owns the plant;

(c) any changes in the ownership of the applicant during the past year;

(d) the name and title of the chief administrator of the applicant's facility, and whether employed by the applicant or another organization as identified in (e) below;

(e) if the controlling organization has placed responsibility for the administration of the facility with another organization, the name and type of organization that manages the facility;

(f) if the facility is operated as a part of a multi-facility system (e.g., medical center, chain of hospitals owned by a religious order, etc.) the name and address of the parent organization;

(g) whether the applicant's facility has received or intends to apply for state licensure or federal certification.

(5) A discussion of the program staffing and operational capabilities of the project, including the following information:

(a) an itemized list of full-time-equivalent staff positions (current and after completion of project), and estimated number of personnel available, including:

- (i) administration;
- (ii) physician services;
- (iii) nursing services;
- (iv) social services;
- (v) other professional/technical;
- (vi) all other (specify);

(b) if the applicant operates an existing facility, whether it meets current staffing standards.

(6) A discussion of the physical structure and services to be provided, including the following information:

(a) a narrative description of the project, including:

(i) size, type construction, floor space to be added or renovated, beds, square feet per bed, parking, etc.;

(ii) description of both old and new facilities where applicable;

(iii) time frame(s) for construction;

(iv) a line drawing of proposal;

(b) a discussion of legal considerations, including:

(i) whether the project will correct non-conforming conditions;

(ii) whether the project is in conformance with current local zoning laws (city or county);

(iii) whether the structures meet current safety and building codes;

(c) a listing of current licensed beds, certified medicare or medicaid beds, and beds to be added in each of the basic service categories;

(d) for home health agencies, the current and proposed number of patient visits and consultations, and the reporting period;

(e) in order to show utilization levels, indication of each of the following for the applicant's facility, if already in existence, and for every other facility of the same kind within the same service area, for each of the past full three years and the current year, as well as utilization projections for each of the foregoing facilities for one, two, and three years:

- (i) average daily census;
- (ii) percent occupancy;
- (iii) average length of stay;
- (iv) total discharges;
- (v) outpatient visits;
- (vi) home care visits;
- (vii) surgical procedures, inpatient and outpatient.

(f) If the applicant's facility is not yet in existence, the applicant must submit all of the above for any other parallel facility in the same service area, along with projections for (i) through (vii) above for the first, second, and third years of operation of the proposed facility.

(7) A discussion of capital expenditure requirements, including the following information:

(a) the approximate date that obligation of funds will be incurred for the proposal;

(b)(i) the source of funds (specify cash on hand, commercial or government loans, grants, net earnings and reserve, bequests and endorsements, charitable fund raising, revenue bonds, other);

(ii) amount available;

(iii) amount to be borrowed;

(c) term and interest rate of loan;

(d) copies of the complete financial operating statements for the last three years and, if available, audited statements;

(e) copies of the following:

(i) projected revenue and expense statements with supportive population and utilization assumptions both during construction and the first two years of operation;

(ii) utilization projections demonstrating need for the project.

(8) Estimated project costs for each of the following:

(a) consultant, legal, architect, engineering, and construction supervision;

(b) financing fees;

(c) feasibility study (include a copy);

(d) interest, principle to be borrowed, reserves related to public bond issue;

(e) land acquisition, site development, and construction.

(9)(a) Effect of project on costs and charges for room rates or specific services;

(b) discussion of operating fund demands and budget factors, including the following:

(i) the sources of operating revenue in percentages (specify medicare, medicaid, private pay, or insurance);

(ii) if grant support is provided for the project, how the service will be financed upon termination of this support;

(iii) whether depreciation will be funded;

(iv) explanation of plans for meeting possible operating deficits;

(c) effect the proposed capital expenditure will have on annual operating costs. Whether the operating costs will be increased or decreased and by how much;

(10) A discussion of cost containment factors, including the following information:

(a) how the proposal demonstrates superior community cost-benefit or community cost-effectiveness;

(b) description of shared services which are available as an alternative to duplication (explain in detail);

(c) alternatives which have been considered to provide the service proposed by the project.

(11) A discussion specifically addressing the review criteria listed in 50-5-304, MCA and ARM 37.106.113.

(12) The signature of a responsible representative of the applicant, the title of the signatory, and the date of signing. (History: Sec. 2-4-201 and 50-5-302, MCA; IMP, Sec. 50-5-302, MCA; NEW, 1984 MAR p. 27, Eff. 1/13/84; AMD, 1987 MAR p. 1074, Eff. 7/17/87; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

Rules 35 and 36 reserved

37.106.137 ANNUAL OPERATIONAL REPORTS BY HOSPITALS

(1) Every hospital shall submit an annual report to the department on a form provided by the department and no later than the deadline specified on the form. The annual reports must be signed by the hospital administrator and must include whichever of the following information is requested on the form:

(a) whether the hospital has received JCAH accreditation, and if so, for what period;

(b) beginning and ending dates of the hospital's reporting period, and whether the facility has been in operation for 12 full months at the end of the most recent reporting period;

(c) a discussion of the organizational aspects of the facility, including the following information:

(i) the type of organization or entity responsible for the day-to-day operation of the hospital (e.g., state, county, city, federal, hospital district, church related, nonprofit corporation, individual, partnership, business corporation);

(ii) whether the controlling organization leases the physical plant from another organization, and if so, the name and type of organization that owns the plant;

(iii) any changes in the ownership, board of directors or articles of incorporation during the past year;

(iv) the name of the current chairman of the board of directors;

(v) if the controlling organization has placed responsibility for the administration of the hospital with another organization, the name and type of organization that manages the facility. A copy of the latest management agreement must be provided;

(vi) if the hospital is operated as a part of a multi-facility system (e.g., medical center, chain of hospitals owned by a religious order, etc.) the name and address of the parent organization;

(d) whether the hospital provides primarily general medical/surgical services, or specialty services (specify);

(e) specific facilities and services provided by the hospital, bed capacities for each service (where applicable), and whether such services are provided full or part-time, by hospital personnel, or by contracting providers;

- (f) newborn nursery statistics, including:
 - (i) number of bassinets set up and staffed;
 - (ii) total number of births;
 - (iii) total new born days;
 - (iv) neonatal intensive care admissions and inpatient days;
- (g) surgery statistics, including:
 - (i) number of inpatient and outpatient surgery suites;
 - (ii) number of inpatient and outpatient operations performed;
 - (iii) number of adult and pediatric open-heart surgical operations performed;
 - (iv) total adult and pediatric cardiac catheterization and intracardiac and/or coronary artery procedures;
 - (h) number of beds set up and staffed and total inpatient days (excluding newborns) in each basic inpatient service category;
 - (i) inpatient statistics, including:
 - (i) number of licensed hospital beds (excluding bassinets and long-term care beds);
 - (ii) number of admissions (excluding newborns);
 - (iii) number of discharges (including deaths);
 - (iv) number of deaths (excluding fetal deaths);
 - (v) census on last day of reporting period (excluding newborns);
 - (j) information on other services, including number of rooms or units, number of inpatient and outpatient procedures, and number of outpatient visits in at least the following areas:
 - (i) emergency room;
 - (ii) organized outpatient department;
 - (iii) x-ray, ultrasound, nuclear medicine, cobalt therapy, CT scans;
 - (iv) physical therapy;
 - (v) respiratory therapy;
 - (vi) renal dialysis;
 - (vii) other ancillary services;
 - (k) information on changes in total number of beds during the reporting period;
 - (l) whether there is a separate long-term care unit, and if so, how many beds;

(m) patient origin data, including every town of origin and number of discharges;

(n) total medicare and medicaid admissions and inpatient days;

(o) size of medical and non-medical staff, including number of active and consulting physicians, medical residents and trainees, registered and licensed professional or vocational nurses, and all other personnel;

(p) name of person to contact in the event the department has questions concerning the information provided in the annual report. (History: Sec. 2-4-201, 50-5-103 and 50-5-302, MCA; IMP, Sec. 50-5-106 and 50-5-302, MCA; NEW, 1984 MAR p. 27, Eff. 1/13/84; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.138 ANNUAL FINANCIAL REPORTS BY HOSPITALS

(1) Every hospital shall submit an annual financial report to the department on a form provided by the department and no later than the deadline specified on the form. The annual financial report must be signed by the hospital administrator and must include whichever of the following information is requested on the form:

(a) hospital revenues for both acute and long-term care units, including:

(i) gross revenue from inpatient and outpatient service;
(ii) deductions for contractual adjustments, bad debts, charity, etc.;

(iii) other operating revenue;

(iv) nonoperating revenue (such as government appropriations, mill levies, contributions, grants, etc.);

(b) hospital expenses for both acute and long-term care units, including:

(i) payroll expenses for all categories of personnel;
(ii) nonpayroll expenses, including employee benefits, professional fees, depreciation expense, interest expense, others;

(c) detail of deductions for both acute and long-term care units, including:

(i) bad debts;
(ii) contractual adjustments (specifying medicare, medicaid, blue cross or other);
(iii) charity/Hill-Burton;
(iv) other;

(d) medicaid and medicare program revenue for both acute and long-term care units;

(e) unrestricted fund assets, including dollar amounts of:

(i) current cash and short-term investments;
(ii) current receivables and other current assets;
(iii) gross plant and equipment assets; deductions for accumulated depreciation;

(iv) long-term investments;

(v) other;

(f) unrestricted fund liabilities, including dollar amounts of:

(i) current liabilities;

(ii) long-term debts;

(iii) other liabilities;

(iv) unrestricted fund balance;

(g) restricted fund balances, with identification of specific purposes for which funds are reserved, including plant replacement and expansion, and endowment funds;

(h)(i) capital expenditures made during the reporting period, including expenditures, disposals and retirements for land, building and improvements, fixed and moveable equipment, and construction in progress;

(ii) whether a permanent change in bed complement or in the number of hospital services offered will result from any capital acquisition projects begun during the reporting period (specify);

(iii) whether a certificate of need was received for any projects during the reporting period, and if so, the total capital authorization included in such approvals. (History: Sec. 2-4-201, 50-5-103 and 50-5-302, MCA; IMP, Sec. 50-5-106 and 50-5-302, MCA; NEW, 1984 MAR p. 27, Eff. 1/13/84; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.139 ANNUAL REPORTS BY LONG-TERM CARE AND PERSONAL CARE FACILITIES (1) Every long-term care and personal care facility shall submit an annual report to the department on a form provided by the department and no later than the deadline specified on the form. The annual report must be signed by the facility administrator and must include whichever of the following information is requested on the form:

(a) the facility's reporting period, and whether the facility was in operation for a full 12 months at the end of the reporting period;

(b) a discussion of the organizational aspects of the facility, including the following information:

(i) the type of organization or entity responsible for the day-to-day operation of the facility (e.g., state, county, city, federal, hospital district, church related, nonprofit corporation, individual, partnership, business corporation);

(ii) whether the controlling organization leases the physical plant from another organization. If so, the name and type of organization that owns the plant;

(iii) any changes in the ownership, board of directors or articles of incorporation of the facility during the past year;

(iv) the name of the current chairman of the board of directors of the facility;

(v) if the controlling organization has placed responsibility for the administration of the facility with another organization, the name and type of organization that manages the facility. A copy of the latest management agreement must be provided;

(vi) if the facility is operated as a part of a multi-facility system (e.g., medical center, chain of hospitals owned by a religious order, etc.) the name and address of the parent organization;

(c) utilization information, including:

(i) licensed bed capacity (skilled and intermediate);

(ii) whether the facility is certified for medicare or medicaid;

(iii) number of beds currently set up and staffed;

(iv) total patient census on first day of reporting period; total admissions, discharges, patient deaths, and patient-days of service during the reporting period;

(v) patient census on last day of reporting period, broken down by sex and age categories;

- (d) financial data, including:
 - (i) total annual operating expenses (payroll and non-payroll);
 - (ii) closing date of financial statement;
 - (iii) sources of operating revenue, indicating percent received from medicare, medicaid, private pay, insurance, grants, contributions, and other;
 - (e) staff information, including number and classification of full and part-time medical personnel, as required on the survey form;
 - (f) patient origin data, including patients' counties of residence, and number of admissions from state institutions and from out-of-state;
 - (g) name of person to contact should the department have any questions regarding the information on the report.
- (History: Sec. 2-4-201, 50-5-103 and 50-5-302, MCA; IMP, Sec. 50-5-106 and 50-5-302, MCA; NEW, 1984 MAR p. 27, Eff. 1/13/84; AMD, 1987 MAR p. 1074, Eff. 7/17/87; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.140 ANNUAL REPORTS BY HOME HEALTH AGENCIES

(1) Every home health agency shall submit an annual report to the department on a form provided by the department and no later than the deadline specified on the form. The report must be signed by the administrator of the agency and must include whichever of the following information is requested on the form:

(a) whether the agency has medicare certification, and if so, the term of such certification;

(b) the agency's reporting period, and whether the agency was in operation for a full 12 months at the end of the reporting period;

(c) a discussion of the organizational aspects of the project, including the following information:

(i) the type of organization or entity responsible for the day-to-day operation of the agency (e.g., state, county, city, federal, hospital district, church related, nonprofit corporation, individual, partnership, business corporation);

(ii) whether the home health agency is owned by the same organization that controls it. If not, the name and type of organization that owns the agency;

(iii) any changes in the ownership, board of directors or articles of incorporation of the agency during the past year;

(iv) the name of the current chairman of the board of directors of the agency;

(v) if the controlling organization has placed responsibility for the administration of the agency with another organization, the name and type of organization that manages the facility. A copy of the latest management agreement must be provided;

(vi) if the agency is operated as a part of a multi-facility system (e.g., medical center, chain of hospitals owned by a religious order, etc.) the name and address of the parent organization;

(d) a listing of specific services provided by the agency, and the number of people served and number of visits made for each service;

(e) a description of the geographic area served by the agency;

(f) the number of persons served by the agency and the number of new cases acquired by the agency during the reporting period;

- (g) financial data, including:
 - (i) payroll and non-payroll expenses;
 - (ii) closing date of financial statement;
 - (iii) sources of operating revenue, indicating percentage received from medicare, medicaid, private pay, insurance, grants, contributions, other;
- (h) staff information, including number of full, part-time and contracted registered and licensed professional nurses, home health aids, student nurses, and others;
- (i) the name of the person to contact should the department have questions regarding the information on the report. (History: Sec. 2-4-201, 50-5-103 and 50-5-302, MCA; IMP, Sec. 50-5-106 and 50-5-302, MCA; NEW, 1984 MAR p. 27, Eff. 1/13/84; AMD, 1996 MAR p. 1975, Eff. 7/19/96; TRANS, from DHES, 2002 MAR p. 185.)

Subchapter 2 reserved

Subchapter 3

Construction and Minimum Standards
for All Health Care Facilities

37.106.301 DEFINITIONS The following definitions apply in this subchapter:

(1) "Administrator" means the individual responsible for the day-to-day operation of a hospital, skilled or intermediate care facility. This individual may also be known as, but not limited to, "chief executive officer", "executive director", or "president".

(2) "Adult day care center" means a facility as defined in 50-5-101(2), MCA, but does not include day habilitation programs for the developmentally disabled and handicapped or a program offered by a church or senior citizens organization for purposes other than provision of custodial care necessary to meet daily living needs.

(3) "Communicable disease" means an illness due or suspected to be due to a specific infectious agent or its toxic products, which results from transmission of that agent or its products to a susceptible host directly or indirectly, and includes a dangerous communicable disease.

(4) "Coronary care unit" means an area within the hospital where there is a concentration of physicians, nurses, and other staff who have special skills and experience in providing care for critically ill cardiac patients.

(5) "Diagnostic" means the art, science or method of distinguishing signs or symptoms of a diseased condition.

(6) "Hospitalization" means being hospitalized or admitted to a hospital.

(7) "Hospital record" means written records of admissions, discharges, total patient days, register of operations performed and outpatients treated.

(8) "Inpatient" means a patient lodged and fed in a facility while receiving treatment.

(9) "Intensive care unit" means an area within the hospital where there is a concentration of physicians, nurses, and other staff who have specialized skills and experience in providing care for critically ill medical and surgical patients.

(10) "Manager" means the individual responsible for the day-to-day operation of a health care facility, excluding a hospital, skilled or intermediate care facility.

(11) "Medical record" means a written document which is complete, current and contains sufficient information for planning a patient's or resident's care, reviewing and evaluating care rendered, evaluating a patient's or resident's condition, and for providing a means of communication among all persons providing care.

(12) "Obstetrical service" means an area within the hospital which provides care for a maternity patient including but not limited to labor, delivery and postpartum care.

(13) "Outpatient" means a person receiving health care services and treatment at a facility without being admitted as an inpatient to the facility.

(14) "Supervise" means to oversee and direct staff by being present in the health care facility. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-101, 50-5-103, 50-5-104, 50-5-105, 50-5-106, 50-5-107, 50-5-108, 50-5-109, 50-5-201, 50-5-202, 50-5-203, 50-5-204, 50-5-207, 50-5-208, 50-5-210, 50-5-211, 50-5-212, 50-5-221, 50-5-225, 50-5-226, 50-5-227, 50-5-228, 50-5-229, 50-5-230 and 50-5-231, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; AMD, 1984 MAR p. 973, Eff. 6/29/84; TRANS, from DHES, 2002 MAR p. 185.)

37.106.302 MINIMUM STANDARDS OF CONSTRUCTION FOR A
LICENSED HEALTH CARE FACILITY: ADDITION, ALTERATION, OR NEW
CONSTRUCTION: GENERAL REQUIREMENTS

(1) Except as may otherwise be provided in (2) of this rule, a health care facility and the construction of, alteration, or addition to a facility shall comply with:

(a) all standards set forth in:

(i) the 2001 Guidelines for Design and Construction of Hospitals and Health Care Facilities and NFPA 101, "Life Safety Code", 2000 edition, except that a facility already licensed under an earlier edition of the "Life Safety Code" published by the national fire protection association, is not required to comply with later editions of the "Life Safety Code". Copies of the cited editions are available at the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT, 59620-2953.

(ii) the 1992 "American National Standards Institute A117.1".

(b) the water supply system requirements of ARM 37.111.115;

(c) the sewage system requirements of ARM 37.111.116.

(2) A personal care facility, chemical dependency treatment center, or a free-standing adult day care center:

(a) must meet all applicable building and fire codes and be approved by the officer having jurisdiction to determine if the building codes are met by the facility and by the state fire marshal or his designee;

(b) meet the water and sewer system requirements in (1)(b) and (c) above.

(3) A patient or resident may not be admitted, housed, treated, or cared for in an addition or altered area until inspected and approved, or in new construction until licensed.

(4) The department hereby adopts and incorporates by reference:

(a) The 2001 Guidelines for Design and Construction of Hospital and Health Care Facilities which set forth minimum construction and equipment requirements deemed necessary by the state department of public health and human services to ensure health care facilities can be efficiently maintained and operated to furnish adequate care.

(b) NFPA 101, "Life Safety Code 2000 edition", published by the national fire protection association, which sets forth construction and operation requirements designed to protect against fire hazards.

(c) ARM 37.111.115, which sets forth requirements for construction and maintenance of water supply systems, including supplies of ice.

(d) ARM 37.111.116, which sets forth requirements for construction and maintenance of sewage systems.

(e) The 1992 "American National Standards Institute A117.1", which sets forth standards for buildings and facilities, providing accessibility and usability for physically handicapped individuals.

(f) Copies of the materials cited above are available at the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, 50-5-201 and 50-5-204, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; AMD, 1984 MAR p. 929, Eff. 6/15/84; AMD, 1984 MAR p. 1090, Eff. 7/27/84; AMD, 1993 MAR p. 1658, Eff. 7/30/93; AMD, 1995 MAR p. 283, Eff. 2/24/95; AMD, 1997 MAR p. 1993, Eff. 11/4/97; AMD, 2001 MAR p. 1105, Eff. 6/21/01; TRANS & AMD, 2002 MAR p. 192, Eff. 2/1/02; AMD, 2003 MAR p. 1321, Eff. 7/1/03.)

Rules 03 through 05 reserved

37.106.306 SUBMISSION OF PLANS AND SPECIFICATIONS: A NEW INSTITUTIONAL HEALTH SERVICE: ALTERATION OR ADDITION TO A HEALTH CARE FACILITY

(1) A person who contemplates construction of a new institutional health service and has been issued a certificate of need pursuant to Title 50, chapter 5, part 3, MCA, and ARM Title 37, chapter 106, subchapter 1 shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction and shall comply with the following procedures.

(a) At least nine months prior to the time a person commences construction, he shall submit a program and schematic plans to the department. This is a maximum time limit. A person may submit a program and schematic plans as soon as he desires after he receives a certificate of need.

(i) The program must include the following:

(A) a narrative description of the rooms or spaces to be included in each department, explaining the functions or services to be provided in each, indicating the size, the number of personnel and the kind of equipment or furniture it will contain;

(B) for inpatient facilities, a schedule showing total number of beds and number of bedrooms.

(ii) The schematic plans must include the following:

(A) single line drawings of each floor which must show the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room must be noted;

(B) the proposed roads and walks, service and entrance courts, and parking must be shown on the plot plan;

(C) total floor area and number of beds must be noted on the plans.

(b) At least three months prior to the time a person commences construction, he shall submit working drawings and specifications to the department. This is a maximum time limit. A person may submit working drawings and specifications as soon as he desires after the department has approved his program and schematic plans.

(i) The working drawings must be complete and adequate for bid, contract and construction purposes and must be prepared for each of the following branches of the work: architectural, structural, mechanical and electrical.

(A) Architectural drawings must include a plot plan showing all new topography, newly established levels and grades, any existing structures on the site, new buildings and structures, roadways, walks and the extent of the areas to be seeded. Any structures and improvements which are to be removed as part of the work must be shown. A print of the site survey drawing must be included with the working drawings. The architectural drawings must also include the following:

- (I) plan of each basement, floor and roof;
- (II) elevations of each facade;
- (III) sections through building;
- (IV) required scale and full-size details;
- (V) schedule of doors and finishes;
- (VI) location of all fixed equipment;
- (VII) adequate details of any conveying system.

(B) Structural drawings must include plans for foundations, floors, roofs and all intermediate levels with sizes, sections and the relative location of the various structural members.

(C) Mechanical drawings must include plans for plumbing, heating, ventilation, air conditioning, and refrigeration.

(D) Electrical drawings must include the complete power and lighting layout of all electrical systems to be included in the construction and must include telephone layouts, nurse call system, fire alarm system and the emergency electrical system.

(c) Specifications must supplement the working drawings to fully describe types, sizes, capacities, workmanship, finishes and other characteristics of all materials and equipment.

(d) All plans and specifications must be certified by an engineer or architect licensed to practice in Montana and the certification must state that the plans and specifications are prepared in accordance with the requirements of this subchapter.

(2) A person who contemplates an alteration or addition to a health care facility which does not qualify as a new institutional health service shall submit plans to the department for preliminary inspection and approval prior to commencing construction and shall comply with the following procedures.

(a) A person who contemplates an addition to an existing health care facility shall comply with the requirements set forth in (1) of this rule.

(b) If an alteration to a health care facility is contemplated, a program and schematic plans shall be submitted to the department at least six months prior to commencing construction of the alteration. Within 30 days after this submittal, the department may request a person to comply with the requirements set forth in ARM 37.106.306(1)(b).

(c) The department's approval of an alteration or addition shall terminate one year after issuance. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, 50-5-201 and 50-5-204, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

Rules 07 through 09 reserved

37.106.310 LICENSING: PROCEDURE FOR OBTAINING A LICENSE: ISSUANCE AND RENEWAL OF A LICENSE (1) A person shall comply with the following procedures when applying to the department for a license:

(a) A person shall submit a completed license application form to the department, at least 30 days prior to the opening of a facility and annually thereafter. A person can obtain a license application form from the department.

(b) A completed license application form must contain the following information:

(i) the name and address of the applicant if an individual; the name and address of each member of a firm, partnership, or association; or the name and address of each officer if a corporation;

(ii) the location of the facility;

(iii) the name of the person or persons who will administer, manage or supervise the facility;

(iv) the number and type of patients or residents for which care is provided;

(v) the number of employees in all job classifications;

(vi) a copy of the contract, lease agreement or other document indicating the person legally responsible for the operation of the health care facility if the health care facility is operated by a person other than the owner; and

(vii) designated name of health care facility to be licensed.

(A) The designated name of the health care facility may not be changed without first notifying the department in writing.

(c) Each application form must be accompanied by the applicable license fee:

(i) \$20 license fee for a health care facility with 20 beds or less;

(ii) \$1 per bed for a health care facility with 21 beds or more.

(d) The owner or operator of a health care facility shall sign the completed license application form.

(2) On receipt of a new or renewal license application, the department or its authorized agent shall inspect the health care facility to determine if the proposed staff is qualified and the facility meets the minimum standards set forth in this subchapter. If minimum standards are met and the proposed staff is qualified, the department shall issue a license for one year.

(a) A patient or resident may not be admitted or cared for in a health care facility unless the facility is licensed.

(b) Licensed premises must be open to inspection by the department or its authorized agent and access to all records must be granted to the department at all reasonable times.

(c) The department may issue a provisional license for a period less than one year if continued operation of the health care facility will not result in undue hazard to patients or residents or if demand for the accommodations offered is not met in the community. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, 50-5-202, 50-5-203 and 50-5-204, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

37.106.311 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: FOOD SERVICE ESTABLISHMENTS (1) A health care facility which serves food or beverage to patients or residents shall comply with the food service establishment act, Title 50, chapter 50, MCA, and food service establishments rules, ARM Title 37, chapter 110, subchapter 2. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

37.106.312

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

37.106.312 MINIMUM STANDARDS FOR ALL HEALTH CARE
FACILITIES: BLOOD BANK AND TRANSFUSION SERVICES (REPEALED)
(History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103,
50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80;
AMD, 1984 MAR p. 973, Eff. 6/29/84; TRANS, from DHES, 2002 MAR
p. 185; REP, 2005 MAR p. 268, Eff. 2/11/05.)

37.106.313 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: COMMUNICABLE DISEASE CONTROL (1) All health care facilities shall develop and implement an infection prevention and control program. At minimum the facility shall develop, implement, and review, at least annually, written policies and procedures regarding infection prevention and control which must include, but not be limited to, procedures to identify high risk individuals and what methods are used to protect, contain or minimize the risk to patients, residents, staff and visitors.

(2) The administrator, or designee, shall be responsible for the direction, provision, and quality of infection prevention and control services. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185; AMD, 2004 MAR p. 582, Eff. 3/12/04.)

37.106.314 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: MEDICAL RECORDS (1) A health care facility shall initiate and maintain by storing in a safe manner and in a safe location a medical record for each patient and resident.

(2) A health care facility, excluding a hospital, shall retain a patient's or resident's medical records for no less than five years following the date of the patient's or resident's discharge or death.

(3) A medical record may be microfilmed or preserved via any other electronic medium that yields a true copy of the record if the health care facility has the equipment to reproduce records on the premises.

(4) A signature of a physician may not be stamped on a medical record unless there is a statement in the facility administrator's or manager's file signed by the physician stating that the physician is responsible for the content of any document signed with his rubber stamp. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-106, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; AMD, 1990 MAR p. 1259, Eff. 6/29/90; TRANS, from DHES, 2002 MAR p. 185.)

Rules 15 through 19 reserved

37.106.320 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: PHYSICAL PLANT AND EQUIPMENT MAINTENANCE (1) Each facility shall have a written maintenance program describing the procedures that must be utilized by maintenance personnel to keep the building and equipment in repair and free from hazards.

(2) A health care facility shall provide housekeeping services on a daily basis.

(3) All electrical, mechanical, plumbing, fire protection, heating, and sewage disposal systems must be kept in operational condition.

(4) Floors must be covered with an easily cleanable covering; e.g., resilient flooring or ceramic tile. This covering must be cleaned daily.

(5) Carpets are prohibited in bathrooms, kitchens, laundries, or janitor closets.

(6) Walls and ceilings must be kept in good repair and be of a finish that can be easily cleaned.

(7) Every facility must be kept clean and free of odors. Deodorants may not be used for odor control in lieu of proper ventilation.

(8) The temperature of hot water supplied to handwashing and bathing facilities must not exceed 120°F. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; AMD, 1984 MAR p. 973, Eff. 6/29/84; TRANS, from DHES, 2002 MAR p. 185.)

37.106.321 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: ENVIRONMENTAL CONTROL (1) A health care facility must be constructed and maintained so as to prevent entrance and harborage of rats, mice, insects, flies, or other vermin.

(2) Hand cleansing soap or detergent and individual towels must be available at each lavatory in the facility. A waste receptacle must be located near each lavatory.

(3) A health care facility shall develop and follow a written infection control surveillance program describing the procedures that must be utilized by the entire facility staff in the identification, investigation, and mitigation of infections acquired in the facility.

(4) Cleaners used in cleaning bathtubs, showers, lavatories, urinals, toilet bowls, toilet seats, and floors must contain fungicides or germicides with current EPA registration for that purpose.

(5) Cleaning devices used for lavatories, toilet bowls, showers, or bathtubs may not be used for other purposes. Those utensils used to clean toilets or urinals must not be allowed to contact other cleaning devices.

(6) Dry dust mops and dry dust cloths may not be used for dusting or other cleaning purposes. Treated mops, wet mops, treated cloths, moist cloths or other means approved by the department which will not spread soil from one place to another must be used for dusting and cleaning and must be stored separately from the cleaning devices described in (5) above.

(7) A minimum of 10 foot-candles of light must be available in all rooms and hallways, with the following exceptions:

(a) all reading lamps must have a capacity to provide a minimum of 30 foot-candles of light;

(b) all toilet and bathing areas must be provided with a minimum of 30 foot-candles of light;

(c) general lighting in food preparation areas must be a minimum of 50 foot-candles of light;

(d) hallways must be illuminated at all times by at least a minimum of five foot-candles of light at the floor. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; AMD, 1984 MAR p. 973, Eff. 6/29/84; TRANS, from DHES, 2002 MAR p. 185.)

37.106.322 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: DISASTER PLAN (1) A health care facility shall develop a disaster plan in conjunction with other emergency services in the community which must include a procedure that will be followed in the event of a natural or man-caused disaster.

(2) A health care facility shall conduct a drill of such procedure at least once a year. After a drill, a health care facility shall prepare and retain on file a written report including, but not limited to, the following:

- (a) date and time of the drill;
- (b) the names of staff involved in the drill;
- (c) the names of other health care facilities, if any, which were involved in the drill;
- (d) the names of other persons involved in the drill;
- (e) a description of all phases of the drill procedure and suggestions for improvement; and
- (f) the signature of the person conducting the drill.

(History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

Rules 23 through 29 reserved

37.106.330 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: WRITTEN POLICY AND PROCEDURE (1) A written policy and procedure for all services provided in a health care facility must be available to and followed by all personnel. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

37.106.331 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES: LAUNDRY AND BEDDING (1) If a health care facility processes its laundry on the facility site, it must:

(a) set aside and utilize a room solely for laundry purposes;

(b) equip the laundry room with a mechanical washer and dryer (or additional machines if necessary to handle the laundry load), handwashing facilities, mechanical ventilation to the outside, a fresh air supply, and a hot water supply system which supplies the washer with water of at least 160°F (71°C) during each use;

(c) sort and store soiled laundry in an area separate from that used to sort and store clean laundry;

(d) provide well maintained carts or other containers impervious to moisture to transport laundry, keeping those used for soiled laundry separate from those used for clean laundry;

(e) dry all bed linen, towels, and washcloths in the dryer, or, in the case of bed linen, by use of a flatwork ironer;

(f) protect clean laundry from contamination;

(g) ensure that facility staff handling laundry cover their clothes while working with soiled laundry, use separate clean covering for their clothes while handling clean laundry, and wash their hands both after working with soiled laundry and before they handle clean laundry.

(2) If laundry is cleaned off site, the health care facility must utilize a commercial laundry (not self-service) which satisfies the requirements stated in (1)(a) through (g) above.

(3) A health care facility with beds must:

(a) keep each resident bed dressed in clean bed linen in good condition;

(b) keep a supply of clean bed linen on hand sufficient to change beds often enough to keep them clean, dry, and free from odors;

(c) supply each resident at all times with clean towels and washcloths;

(d) provide each resident bed with a moisture-proof mattress or a moisture-proof mattress cover and mattress pad;

(e) provide each resident with enough blankets to maintain warmth while sleeping. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1984 MAR p. 973, Eff. 6/29/84; TRANS, from DHES, 2002 MAR p. 185.)

Subchapter 4

Minimum Standards for a Hospital

37.106.401 MINIMUM STANDARDS FOR A HOSPITAL: GENERAL REQUIREMENTS (1) A hospital shall comply with the Conditions of Participation for Hospitals in 42 CFR 482.2 through 482.62, revised as of October 1, 2002.

(2) If a hospital provides skilled nursing care or intermediate nursing care, as those levels of care are defined in 50-5-101, MCA, the hospital shall comply with the skilled nursing facility requirements listed in 42 CFR 482.66(b) revised as of October 1, 2002.

(3) The department hereby adopts and incorporates by reference 42 CFR 482.2 through 482.62 and 42 CFR 482.66(b), revised as of October 1, 2002. 42 CFR 482.2 through 482.62 set forth the conditions of participation a hospital must meet to participate in the medicare program. 42 CFR 482.66(b) sets forth the skilled nursing facility requirements a hospital provider of long term care services must meet to participate in the medicare program. A copy of the regulations may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; AMD, 1996 MAR p. 3216, Eff. 12/20/96; AMD, 1999 MAR p. 146, Eff. 1/15/99; TRANS, from DHES, 2002 MAR p. 185; AMD, 2003 MAR p. 1321, Eff. 7/1/03.)

37.106.402 MINIMUM STANDARDS FOR A HOSPITAL: MEDICAL RECORDS Medical records shall comply with the following requirements:

(1) A patient's entire medical record must be maintained, in either its original form or that allowed by ARM 37.106.314(3), for not less than 10 years following the date of a patient's discharge or death, or, in the case of a patient who is a minor, for not less than 10 years following the date the patient either attains the age of majority or dies, if earlier.

(2) An obstetrical record shall be developed for each maternity patient and must include the prenatal record, labor notes, obstetrical anesthesia notes and delivery record.

(3) A record must be developed for each newborn, and shall include, in addition to the information in (2), the following information:

- (a) observations of newborn after birth;
- (b) delivery room care of newborn;
- (c) physical examinations performed on newborn;
- (d) temperature of newborn;
- (e) weight of newborn;
- (f) time of newborn's first urination;
- (g) number, character and consistency of newborn's stool;
- (h) type of feeding administered to newborn;
- (i) phenylketonuria report for newborn;
- (j) name of person to whom newborn is released.

(4) A patient's entire medical record may be abridged following the dates established in (1) to form a core medical record of the patient's medical record. The core medical record or the microfilmed medical record should be maintained permanently but must be maintained not less than 10 years beyond the periods provided in (1). A core record shall contain at a minimum the following information:

(a) identification of patient data which includes name, maiden name if relevant, address, date of birth, sex, and, if available, social security number;

(b) medical history;

(c) physical examination report;

(d) consultation reports;

(e) report of operation;

(f) pathology report;

(g) discharge summary, except that for newborns and others for whom no discharge summary is available, the final progress note must be retained;

(h) autopsy findings;

(i) for each maternity patient, the information required by (2); and

(j) for each newborn, the information required by (3).

(5) Nothing in this rule may be construed to prohibit retention of hospital medical records beyond the period described herein or to prohibit the retention of the entire medical record.

(6) Diagnostic imaging film and electrodiagnostic tracings must be retained for a period of five years; their interpretations must be retained for the same periods required for the medical record in (1), but need not be retained beyond those periods. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-106 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; AMD, 1986 MAR p. 1583, Eff. 9/26/86; AMD, 1990 MAR p. 1259, Eff. 6/29/90; TRANS, from DHES, 2002 MAR p. 185.)

37.106.403 MINIMUM STANDARDS FOR A HOSPITAL: HOSPITAL RECORDS (1) Hospital records must be maintained. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-106 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

37.106.404 MINIMUM STANDARDS FOR A HOSPITAL: LABORATORIES (1) A hospital laboratory shall comply with the Conditions for Coverage of Services of Independent Laboratories as set forth in 42 CFR 405.1310, 405.1311, 405.1314, 405.1316, and 405.1317. A copy of the cited rules is available at the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

37.106.405 MINIMUM STANDARDS FOR A HOSPITAL: ORGAN DONATION REQUESTS AND PROTOCOLS (1) This rule is adopted to implement Chapter 219, Laws of 1987, which amended both the Uniform Anatomical Gift Act, Title 72, chapter 17, MCA, and the Montana Health Care Facility Licensing Act, Title 50, chapter 5, part 2, MCA. Sections (2) through (5) of this rule paraphrase 72-17-211, MCA of the Uniform Anatomical Gift Act and are included here to clarify the requirements for hospitals in cases of patients who are suitable organ donors. For a full text of the Uniform Anatomical Gift Act, reference should be made to Title 72, chapter 17, MCA.

(2) When, according to generally accepted medical standards, a patient is a suitable candidate for donation of body parts as defined in 72-17-102(8), MCA, the hospital administrator or his/her designated representative shall communicate to the next-of-kin (as defined in (3) below) the option of donating all or any part of the patient's body and of the next-of-kin's option to decline. In addition to communicating such options, the hospital administrator or his/her designee must also request the next-of-kin to consent to an anatomical gift. The foregoing obligations of the administrator must be carried out unless the administrator or his/her designee:

(a) has actual notice of opposition to the gift by the decedent or the next-of-kin as defined in (3) below; or

(b) has reason to believe that an anatomical gift is contrary to the decedent's religious beliefs; or

(c) is aware of medical or emotional conditions under which the request would contribute to severe emotional distress.

(3) "Next-of-kin" as provided in 72-17-201(2), MCA, means one of the following persons in order of priority listed:

(a) the spouse;

(b) an adult son or daughter;

(c) either parent;

(d) an adult brother or sister; and

(e) a guardian of the person of the decedent at the time of death.

(4) The medical record of each patient who dies in a hospital and who is determined (under the hospital's protocol established under (6) below) to be a suitable candidate for donation of body parts must contain an entry setting forth the following:

(a) the name and affiliation of the individual who communicated the option to donate to the next-of-kin and who made the request for anatomical gift under (1) above;

(b) the name, relationship to the patient, and response of the individual to whom the option to donate was communicated and of whom the request for anatomical gift was made; and

(c) if no communication of an option or if no request for anatomical gift was made, the reason why no such request was made.

(5) An anatomical gift by a next-of-kin may be made in writing or by telegraphic, recorded telephonic, or other recorded message.

(6) By November 1, 1987, every hospital shall establish and have on file a written protocol that:

(a) assures identification of potential organ and tissue donors;

(b) assures that next-of-kin of patients who are suitable candidates for donation of body parts are made aware of their option to make an anatomical gift and are requested to consent to an anatomical gift of all or any part of the patient's body, unless one of the exceptions in (2)(a), (2)(b) or (2)(c) applies;

(c) encourages discretion and sensitivity with respect to the circumstances, views, and beliefs of families of potential organ donors; and

(d) provides for notification of an appropriate federally approved organ procurement organization when potential organ donors are identified in the hospital.

(7) Upon request, every hospital must make its adopted written protocol available to department personnel for their review.

(8) The protocol must, at a minimum, in addition to the items in (6) above, address and provide for the following aspects of an organ donation notification/request/referral program:

(a) method(s) by which the public is notified that the hospital has an organ procurement program;

(b) determination of medical suitability of potential donors of body parts, including consideration of factors such as donor age, previous disease history, and presence of infection; and documentation of non-suitability of patients initially identified as potential donors;

(c) a training and educational program conducted on a yearly basis in conjunction with a procurement organization (or the equivalent) to instruct appropriate hospital staff or others to convey organ donation information to next-of-kin and to make requests from next-of-kin, which program consists of formal training, seminars, in-service workshops, or other training (or a combination thereof) leading to a knowledge of and familiarity with the following:

(i) general historical, medical, legal and social concepts involved in organ donation and transplantation;

(ii) psychological and emotional considerations when dealing with bereaved families;

(iii) religious, cultural, and ethical considerations associated with organ donation; and

(iv) procedures for approaching donors and/or donors' next-of-kin, including physician notification, timing and location of contact, content(s) of communication concerning donor cards, consent forms, donation costs (if any), and actual requests for donation;

(d) orientation and instruction on a yearly basis in conjunction with a procurement organization (or the equivalent) in the respective disciplines of hospital staff and/or other personnel who will or may be participating in the hospital's organ procurement program, such as chief of staff, attending physicians, nursing staff, social workers, clergy, or a team combining any of such persons; and

(e) the following forms to be used by the hospital to document that next-of-kin of medically suitable patients have been notified of the option to consent to an anatomical gift and have been requested to authorize such donation(s) as required in (2) above (and, if any such contact has not been made, the reason(s) why not):

(i) patient authorization;

(ii) consent of next-of-kin; and

(iii) notification of organ procurement organization(s).

(9) The hospital administrator shall designate a person or persons to represent him/her for the purpose of communicating to the next-of-kin the option of an anatomical gift and to make requests for anatomical gifts, in cases where the administrator is unable or will not be making such requests personally. Such persons shall receive the training specified in (8) above, and a list of such person(s) must be made available upon request to department personnel.

(10) A person who acts in good faith in accordance with the terms of (2) of this rule is not liable for damages in any civil proceeding or subject to prosecution in any criminal proceeding that might result from this action. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1987 MAR p. 1786, Eff. 10/16/87; TRANS, from DHES, 2002 MAR p. 185.)

Rules 06 through 09 reserved

37.106.410 MINIMUM STANDARDS FOR A HOSPITAL: CORONARY CARE UNIT If a hospital provides a coronary care unit, the unit shall comply with the following requirements:

(1) When a patient is cared for in a coronary care unit, a licensed registered nurse shall be on duty.

(2) At a minimum, the following equipment and supplies must be available in a coronary care unit:

(a) oxygen, oxygen and suction apparatus;

(b) defibrillator, resuscitator and respirator;

(c) emergency drugs;

(d) oscilloscope;

(e) heart-rate meter with an alarm system;

(f) an electrocardiograph which is activated simultaneously with the alarm system and which may also be activated manually or at predetermined intervals;

(g) external pacemaker. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

37.106.411 MINIMUM STANDARDS FOR A HOSPITAL: INTENSIVE CARE UNIT If a hospital provides an intensive care unit, the unit shall comply with the following requirements:

(1) When a patient is cared for in an intensive care unit, a licensed registered nurse shall be on duty.

(2) At a minimum, the following equipment and supplies must be available in an intensive care unit:

- (a) oxygen, oxygen and suction apparatus;
- (b) defibrillator, resuscitator and respirator;
- (c) emergency drugs. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

Rules 12 through 19 reserved

37.106.420 MINIMUM STANDARDS FOR A HOSPITAL: OBSTETRICAL SERVICES If a hospital provides obstetrical services, the hospital shall comply with the following requirements:

(1) Obstetrical services must be under the supervision of a licensed registered nurse on a 24-hour basis.

(2) A maternity patient shall only be placed in a room with other maternity patients. The use of maternity rooms for other than maternity patients shall be restricted to noninfected gynecological and surgical patients. A maternity patient with infection shall be isolated in a separate room outside of the obstetrical service.

(3) An equipped room must be provided for each patient in labor.

(4) At least one delivery room must be provided.

(5) A delivery record shall be made for a maternity patient delivering and include, but not be limited to, the following information:

- (a) starting time of patient's labor;
- (b) time of birth of patient's newborn;
- (c) anesthesia used on patient;
- (d) whether an episiotomy was performed on patient;
- (e) whether forceps were used in delivery;
- (f) names of attending physicians;
- (g) names of attending nurses;
- (h) names of all other persons attending delivery;
- (i) sex of the newborn;
- (j) time of eye prophylactic treatment and name of drug used.

(6) A newborn must be marked for identification before removal from the delivery area. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

37.106.421 MINIMUM STANDARDS FOR A HOSPITAL: NEWBORN NURSERY If a hospital provides a newborn nursery, the nursery shall comply with the following requirements:

(1) The newborn nursery must be under the supervision of a licensed registered nurse on a 24-hour basis.

(2) An individual bassinet must be provided for each newborn.

(3) Each newborn must have separate equipment and supplies for bathing, dressing and other handling.

(4) At least one incubator must be provided in the nursery.

(5) Oxygen, oxygen and suction equipment must be available and adapted to the size of newborns. When oxygen is administered, the concentration within the incubatory and near the newborn's head shall be determined by means of a reliable oxygen analyzer. These measurements shall be recorded on the newborn's chart.

(6) Formula prepared in the hospital shall be prepared by terminal heat method using separate equipment furnished for formula preparation. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

37.106.422 MINIMUM STANDARDS FOR A HOSPITAL: PEDIATRIC AND ADOLESCENT SERVICES If a hospital provides pediatric and adolescent services, the hospital shall comply with the following requirements:

(1) Pediatric and adolescent services must be under the supervision of a licensed registered nurse.

(2) At a minimum pediatric and adolescent services shall provide the following:

(a) an examination and treatment room with equipment and supplies designed for the care of children;

(b) oxygen and suction equipment designed for children.
(History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

Rules 23 through 29 reserved

37.106.430 MINIMUM STANDARDS FOR A HOSPITAL: PSYCHIATRIC SERVICES If a hospital provides psychiatric services, the hospital shall comply with the following requirements:

(1) Psychiatric services must be under the supervision of a licensed psychiatrist on a 24-hour basis.

(2) Psychiatric service staff must include a sufficient number of adjunctive therapists to provide restorative and rehabilitation services for the number of patients accommodated.

(3) A licensed registered nurse or a licensed practical nurse under the supervision of a registered nurse shall be in charge 24 hours a day. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

Rules 31 through 39 reserved

37.106.440 MINIMUM STANDARDS FOR A HOSPITAL: RESPIRATORY THERAPY If a hospital provides respiratory therapy, the hospital shall comply with the following requirements:

(1) Respiratory therapy services must be under the supervision of a licensed physician appointed from the active medical staff.

(2) An internal and external quality control program must be provided for all parameters of acid-base testing.

(3) Written policies and procedures must be developed describing the control measures to be followed in order to eliminate the transfer of infection from the use of respiratory equipment. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

Subchapter 5 reserved

Subchapter 6

Minimum Standards for Nursing Facilities

37.106.601 MINIMUM STANDARDS FOR A SKILLED AND SKILLED/INTERMEDIATE CARE FACILITY: GENERAL REQUIREMENTS (1) A skilled nursing care facility shall comply with the Conditions of Participation for Skilled Nursing Facilities as set forth in 42 CFR 405, Subpart K. An intermediate care facility shall comply with the requirements set forth in 42 CFR 442, Subparts E and F. A copy of the cited rules is available at the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

Rules 02 through 04 reserved

37.106.605 MINIMUM STANDARDS FOR A SKILLED NURSING CARE FACILITY FOR EACH 24 HOUR PERIOD: STAFFING (1) The following table indicates an absolute minimum staffing pattern below which an acceptable level of care and safety cannot be maintained. Even with this staffing it would be difficult. Therefore, it is recommended that the quantity and quality of staffing should be determined by the administrator in consultation with his director of nursing. This decision should be based on the nursing needs of the patients and should reflect the current concepts of restorative and geriatric care. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; Eff. 12/31/72; TRANS, from DHES, 2002 MAR p. 185.)

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

In Terms Of Hours Of Service Furnished By Each Category Of Personnel

| No. of Beds | R.N.* Hours | L.P.N. Hours | Aide** Hours | R.N. Hours | L.P.N. Hours | Aide** Hours | R.N. Hours | L.P.N. Hours | Aide** Hours |
|-----------------|----------------|-----------------|-----------------|---------------|-----------------|-----------------|---------------|-----------------|-----------------|
| 4-8 Licensed | | | | | | | | | |
| 9-15 | 8 | 0 | 0 | 0 | 8 | 0 | 0 | 8 | 0 |
| 16-20 DAY | 8 | 0 | 4 | 0 | 8 | 0 | 0 | 8 | 0 |
| 21-25 | 8 | 0 | 8 | 0 | 8 | 4 | 0 | 8 | 0 |
| 26-30 | 8 | 0 | 12 | 0 | 8 | 8 | 0 | 8 | 4 |
| 31-35 | 8 | 0 | 16 | 0 | 8 | 8 | 0 | 8 | 8 |
| 36-40 | 8 | 0 | 20 | 0 | 8 | 12 | 0 | 8 | 8 |
| 41-45*** | 8 | 0 | 24 | 0 | 8 | 16 | 0 | 8 | 8 |
| 46-50 | 8 | 8 | 28 | 0 | 8 | 16 | 0 | 8 | 12 |
| 51-55 | 8 | 8 | 32 | 0 | 8 | 20 | 0 | 8 | 16 |
| 56-60 | 8 | 8 | 36 | 8 | 0 | 24 | 0 | 8 | 16 |
| 61-65 | 8 | 8 | 40 | 8 | 0 | 24 | 0 | 8 | 16 |
| 66-70 | 8 | 8 | 44 | 8 | 0 | 28 | 0 | 8 | 20 |
| 71-75 | 8 | 8 | 48 | 8 | 0 | 32 | 0 | 8 | 24 |
| 76-80 | 8 | 8 | 52 | 8 | 0 | 32 | 8 | 0 | 24 |
| 81-85 | 8 | 16 | 48 | 8 | 8 | 32 | 8 | 0 | 24 |
| 86-90 | 8 | 16 | 52 | 8 | 8 | 32 | 8 | 8 | 20 |
| 91-95 | 8 | 16 | 56 | 8 | 8 | 32 | 8 | 8 | 24 |
| 96-100 | 16 | 16 | 52 | 8 | 8 | 36 | 8 | 8 | 24 |
| | 16 | 16 | 56 | 8 | 8 | 40 | 8 | 8 | 24 |

37.106.606 MINIMUM STANDARDS FOR A SKILLED AND SKILLED/INTERMEDIATE CARE FACILITY: DRUG SERVICES (1) Medication shall be released to a patient at discharge only on the written authorization of his licensed physician.

(2) Self-administration of medication by a patient is not permitted except on order of his licensed physician.

(3) Any deviation from the prescribed drug dosage, route or frequency of administration and unexpected drug reactions shall be reported immediately to the patient's licensed physician with an entry made on the patient's medical record and on an incident report.

(4) A current medication reference book must be provided at each nurses station. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

Rules 07 through 39 reserved

37.106.640 MINIMUM STANDARDS FOR AN INFIRMARY (1) The infirmary shall provide patients with licensed physician care.

(2) The infirmary shall provide skilled nursing services. A licensed registered nurse shall serve as charge nurse on the day shift; and a licensed registered or practical nurse shall serve as charge nurse on evening and night shifts.

(3) Nurse staffing schedules must be maintained on file in the infirmary for the preceding six months.

(4) The infirmary shall maintain a medical record for each patient which includes, but is not limited to the following information:

- (a) identification data;
- (b) chief complaint;
- (c) present illness;
- (d) medical history;
- (e) physical examination;
- (f) laboratory and x-ray reports;
- (g) treatment administered;
- (h) tissue report;
- (i) progress reports;
- (j) discharge summary.

(5) If a modified diet is ordered by a physician for a patient, facilities must be available for its preparation and service. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

Rules 41 through 44 reserved

37.106.645 MINIMUM STANDARDS FOR AN INTERMEDIATE DEVELOPMENTAL DISABILITY CARE FACILITY (1) An intermediate developmental disability care facility shall comply with the conditions of participation for intermediate care facilities for the mentally retarded as set forth in 42 CFR 442, Subpart G.

(2) The department hereby adopts and incorporates by reference 42 CFR 442, Subpart G, which is a federal agency rule setting forth administrative, personnel, programmatic, and health standards that must be met by any intermediate care facility for the mentally retarded in order to be medicaid eligible. A copy of 42 CFR 442, Subpart G, may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, 50-5-201 and 50-5-204, MCA; NEW, 1984 MAR p. 973, Eff. 6/29/84; TRANS, from DHES, 2002 MAR p. 185.)

Rules 46 through 49 reserved

37.106.650 MINIMUM STANDARDS FOR A KIDNEY TREATMENT CENTER

(1) A kidney treatment center shall comply with the requirements set forth in 42 CFR 405, Subpart U.

(2) The department hereby adopts and incorporates by reference 42 CFR 405, Subpart U, which sets standards that suppliers of end-stage renal disease services must meet in order to be certified for reimbursement from the federal medicare or medicaid programs. A copy of 42 CFR 405, Subpart U, is available from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; AMD, 1994 MAR p. 3192, Eff. 12/23/94; TRANS, from DHES, 2002 MAR p. 185.)

Subchapter 7

Critical Access Hospital

Rules 01 through 03 reserved

37.106.704 MINIMUM STANDARDS FOR A CRITICAL ACCESS HOSPITAL (CAH) (1) A critical access hospital shall comply with the conditions of participation for critical access hospitals as set forth in 42 CFR 485 Subpart F, updated through May 2005. The department adopts and incorporates by reference 42 CFR 485 Subpart F, updated through May 2005. A copy of the cited requirements is available from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(2) A critical access hospital may maintain up to 25 inpatient beds that can be used interchangeably for acute care or swing-bed services.

(3) A facility qualifies as a necessary provider of health care services to residents of the area where the facility is located if the facility:

(a) is located in a county with fewer than six residents per square mile;

(b) is a state licensed facility located within the boundaries of an Indian reservation;

(c) is located in a county where the percentage of the population age 65 or older exceeds the statewide average; or

(d) has combined inpatient days for medicare and medicaid beneficiaries that account for at least 50% of its total acute inpatient days in the last full year for which data is available.

(4) A critical access hospital shall provide emergency services meeting the emergency needs of patients in accordance with acceptable standards of practice, including the following standards:

(a) Emergency services must be organized under the direction of a practitioner member of the medical staff. A practitioner is a physician, physician's assistant certified or an advanced practice registered nurse.

(b) The services must be integrated with other departments of the facility.

(c) The medical staff must establish and assume continuing responsibility for policies and procedures governing medical care provided in the emergency services.

(d) A practitioner is on duty or on call and physically available at the facility within one hour at all times, unless the procedures described in (4)(e) are adopted and implemented.

(e) Facilities with 10 or fewer beds that are located in frontier areas having fewer than six persons per square mile and who have one medical provider regularly available in the area may provide emergency services through a registered nurse if they have requested and been granted a waiver by the state survey agency for medicare and medicaid. In these instances:

(i) an on call practitioner must be immediately available by phone or radio for the registered nurse to contact, following completion of a nursing assessment, to determine whether the patient requires discharge, further examination, treatment or stabilization and transfer to a facility capable of providing the appropriate level of care;

(ii) all registered nurses providing emergency service coverage must have documented education and competency in emergency care;

(iii) a registered nurse meeting the qualifications specified in (3)(e)(ii) is either on duty or on call and physically available at the facility within 30 minutes at all times; and

(iv) the facility may not use a registered nurse to provide emergency services coverage for more than a 72 hour continuous period of time.

(5) These requirements are in addition to those licensure rule provisions generally applicable to all health care facilities.

(6) A facility aggrieved by a denial, suspension or termination of licensure may request a fair hearing in accordance with ARM 37.5.117. (History: 50-5-233, MCA; IMP, 50-5-233, MCA; NEW, 2002 MAR p. 205, Eff. 2/1/02; AMD, 2003 MAR p. 1992, Eff. 9/12/03; AMD, 2005 MAR p. 2258, Eff. 7/15/05.)

Subchapters 8 and 9 reserved

Subchapter 10

Minimum Standards for Outpatient Facilities

37.106.1001 MINIMUM STANDARDS FOR AN OUTPATIENT FACILITY

(1) Nursing services must be provided by or under the supervision of a licensed registered nurse.

(2) Standing orders utilized for emergency or post-operative care shall be recorded in each patient's medical record and dated and signed by his licensed physician.

(3) An outpatient facility shall maintain a medical record for each patient which includes, but is not limited to, the following information:

- (a) identification data;
- (b) chief complaint;
- (c) present illness;
- (d) medical history;
- (e) physical examination;
- (f) laboratory and x-ray reports;
- (g) treatment administered;
- (h) tissue report;
- (i) progress reports;
- (j) discharge summary. (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

Subchapter 11

Minimum Standards for Medical Assistance Facilities

37.106.1101 MEDICAL ASSISTANCE FACILITIES: DEFINITIONS

(1) As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(a) "Facility" means a medical assistance facility as defined in 50-5-101, MCA.

(b) "Nurse practitioner" means a person who is licensed as a professional registered nurse and approved by the Montana board of nursing as a nurse practitioner specialist.

(c) "Physician" means a person licensed to practice medicine in Montana by the Montana board of medical examiners.

(d) "Physician's assistant" means a person who is approved by the Montana board of medical examiners as meeting the qualifications in its rules and Title 37, chapter 20, MCA, required of assistants to primary care physicians.

(e) "Practitioner" means a physician, nurse practitioner, or physician's assistant. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-101, 50-5-103 and 50-5-204, MCA; NEW, 1989 MAR p. 663, Eff. 4/28/89; TRANS, from DHES, 2002 MAR p. 185.)

Rule 02 reserved

37.106.1103 MEDICAL ASSISTANCE FACILITIES: ORGANIZATIONAL STRUCTURE; GOVERNING BODY (1) A medical assistance facility must have a governing body that is legally responsible for the conduct of the facility and that:

(a) Ensures that the medical staff of the facility:

(i) are appointed by the governing body to the medical staff after the governing body considers the recommendations of the existing members of the medical staff;

(ii) have bylaws and written policies that are approved by the governing body and meet the requirements of (3) below and ARM 37.106.1104;

(iii) are accountable to the governing body for the quality of care provided to patients; and

(iv) are selected on the basis of individual character, competence, training, experience, and judgment.

(b) Appoints a chief executive officer who is responsible for managing the facility.

(c) In accordance with a written policy, ensures that:

(i) Every patient is either under the care of a physician or under the care of a nurse practitioner or physician's assistant supervised by a physician;

(ii) Whenever a patient is admitted to the facility by a physician's assistant or nurse practitioner, the facility's sponsoring physician is notified of that fact, by phone or otherwise, within 24 hours after the admission, and that a written notation of that consultation and of the physician's approval or disapproval is kept in the patient's record;

(iii) A physician, nurse practitioner, or physician's assistant is on duty or on call and physically available at the facility within one hour at all times, unless the procedure described in (iv) is adopted and implemented;

(iv) If the facility cannot ensure that a practitioner is available within one hour after a patient first contacts the facility, within that hour, the director of nursing or alternate:

(A) evaluates the condition of the patient;

(B) determines whether a practitioner can reach the facility before the hour is up; and

(C) if the practitioner will not be available, arranges for the transport of the patient to another facility capable of providing the appropriate level of care; and

(v) No patient is cared for in the facility for more than 96 hours.

(d) Prepares, adopts, and reviews and updates annually an overall institutional plan which includes the following:

(i) An annual operating budget that is prepared according to generally accepted accounting principles and includes all anticipated income and expense; and

(ii) Projected capital expenditures, if any, for at least a three-year period.

(e) Maintains a list of all contracted services, including the scope and nature of the services provided, and ensures that a contractor providing services to the facility:

(i) furnishes services that permit the facility, including the contracted services, to comply with all applicable licensure standards; and

(ii) provides the services in a safe and effective manner.

(f) Ensures that the medical and nursing staff of the facility are licensed, certified, or registered in accordance with Montana law and rules and that each such staff member provides health services within the scope of his or her license, certification, or registration. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-101, 50-5-103 and 50-5-204, MCA; NEW, 1989 MAR p. 663, Eff. 4/28/89; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1104 MEDICAL ASSISTANCE FACILITIES: MEDICAL STAFF

(1) The facility must have a medical staff that includes at least one physician, may also include one or more physician's assistants and/or nurse practitioners, and does the following:

(a) Examines the credentials of candidates for medical staff membership and makes recommendations to the governing board on the appointment of the candidate;

(b) Adopts bylaws containing the following, and enforces the bylaws after their approval by the governing body:

(i) A description of the qualifications a medical staff candidate must meet in order to be recommended to the governing body for appointment.

(ii) A statement of the duties and privileges of each category of medical staff (e.g., physician, physician's assistant, nurse practitioner); and

(iii) A requirement that a physical examination be made and medical history taken of a patient by a member of the medical staff no more than seven days before or 24 hours after the patient's admission to the facility.

(2) A physician on staff must:

(a) Provide medical direction for the facility's health care activities and consultation for, and medical supervision of, non-physician health care staff;

(b) In conjunction with the physician's assistant and/or nurse practitioner staff members, participate in developing, executing, and periodically reviewing the facility's written policies and the services provided patients;

(c) Review and sign the records of each patient admitted and treated by a physician's assistant or nurse practitioner no later than one month after that patient's discharge from the facility;

(d) Provide health care services to the patients in the facility, whenever needed and requested;

(e) Prepare guidelines for the medical management of health problems, including conditions requiring medical consultation and/or patient referral; and

(f) At intervals no more than 30 days apart, be physically present in the facility for a sufficient period of time to provide the medical direction, medical care services, staff consultation and supervision required by this rule, and when not present, either be available through direct telecommunication for consultation, assistance with medical emergencies, or patient referral, or ensure that another physician is available for the purpose; however, the physical site visit for a given 30-day period is not required if, during that period, no patients have been treated by the facility.

(3) A physician's assistant and/or nurse practitioner must:

(a) Participate in the development, execution, and periodic review of the guidelines and written policies governing the services furnished by the facility;

(b) Participate with a physician in a periodic review of each patient's health records;

(c) Provide health care services to patients in accordance with the facility's policies;

(d) Arrange for, or refer patients to, needed services that are not provided at the facility; and

(e) Assure that adequate patient health records are maintained and transferred as necessary when a patient is referred.

(4) A physician's assistant must keep on file at the facility and available for review by the department, upon request, a copy of his or her utilization plan currently approved by the board of medical examiners.

(5) At all times, either a physician, nurse practitioner, or physician assistant must be on duty or on call and available physically to the facility within one hour, unless the facility has implemented the procedure required by ARM 37.106.1103(c)(iv) to deal with occasions in which a practitioner is unavailable. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-101, 50-5-103 and 50-5-204, MCA; NEW, 1989 MAR p. 663, Eff. 4/28/89; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1105 MEDICAL ASSISTANCE FACILITIES: MEDICAL RECORDS (1) A medical assistance facility must maintain a medical records system in accordance with written policies and procedures and meeting the following standards:

(a) The facility must employ adequate personnel to ensure prompt and systematic completion, filing, and retrieval of records.

(b) If the medical record supervisor is not a record administrator or technician registered or accredited by the American medical record association (AMRA), the facility must ensure that the supervisor receives consultation from an AMRA registered record administrator or accredited record technician.

(c) The facility must create and maintain a record for each person receiving health care services from the facility that includes, if applicable:

- (i) identification and social data;
- (ii) admitting diagnosis;
- (iii) pertinent medical history;
- (iv) properly executed consent forms;
- (v) reports of physical examinations, diagnostic and laboratory test results, and consultation findings;
- (vi) all physician's orders, nurses' notes, and reports of treatments and medications;
- (vii) final diagnosis;
- (viii) discharge summary; and
- (ix) any other pertinent information necessary to monitor the patient's prognosis.

(d) Each record must include the signatures of the physician or other health care professional authoring the record entries.

(e) Records of a discharged patient must be completed within 30 days of the discharge date.

(f) The facility must have written policies and procedures ensuring the confidentiality of patient records, and safeguards against loss, destruction, or unauthorized use, in accordance with applicable state and federal law and including policies and procedures which:

(i) Govern the use and removal of records from the record storage area;

(ii) Specify the conditions under which record information may be released and to whom;

(iii) Specify when the patient's written consent is required for release of information, in accordance with Title 50, chapter 16, part 5, MCA, the Uniform Health Care Information Act. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-101, 50-5-103 and 50-5-204, MCA; NEW, 1989 MAR p. 663, Eff. 4/28/89; TRANS, from DHES, 2002 MAR p. 185.)

Rules 06 through 09 reserved

37.106.1110 MEDICAL ASSISTANCE FACILITIES: QUALITY ASSURANCE (1) The governing body of a facility must ensure that there is an effective, ongoing, facility wide, written quality assurance program and implementation plan in effect which ensures and evaluates the quality of the patient care provided there and which includes the following:

(a) Periodic review, not less than semi-annually, of the following, in order to determine whether utilization of services was appropriate, established policies were followed, and any changes are needed:

(i) the utilization of facility services, including at least the number of patients served and the volume of services;

(ii) a representative sample consisting of not less than 10% of both active and closed patient records; and

(iii) the facility's health care policies.

(b) Consideration by the facility's medical staff of the findings of the evaluation and the taking of subsequent remedial action, if necessary.

(c) Evaluation of all services provided by contractors.

(d) Implementation of a discharge planning program that facilitates the provision of post discharge care and:

(i) Ensures that discharge planning for each patient is initiated in a timely manner;

(ii) Ensures that each patient, along with necessary medical information, is transferred or referred to appropriate facilities, agencies, or outpatient services, as needed, for continued, follow up, or ancillary care; and

(iii) Includes a formal referral agreement with one or more hospitals ensuring acceptance by that hospital of the facility's patients needing hospital level care.

(e) The taking and documentation of appropriate remedial action to address deficiencies found through the quality assurance program, as well as documentation of the outcome of the remedial action. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-101, 50-5-103 and 50-5-204, MCA; NEW, 1989 MAR p. 663, Eff. 4/28/89; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1111 MEDICAL ASSISTANCE FACILITIES: UTILIZATION
REVIEW (1) A medical assistance facility must:

(a) Have in effect a utilization review plan to review services furnished by the facility and by members of its medical staff to patients.

(b) Contract with the state peer review organization (PRO) or its department approved equivalent to do the following:

(i) Certify whether all admissions to the facility in the facility's first 12 months of operation were medically necessary;

(ii) During the facility's first 12 months of operation provide consultation to the facility sometime between the 48th and 72nd hour of the stay of each patient admitted to the facility during that period concerning discharge plans for the patient (e.g. transfer to the hospital, discharge to a skilled nursing facility, discharge to home);

(iii) Periodically sample facility cases and review them to determine the medical necessity of the professional services furnished, including drugs and biologicals; during the facility's first 12 months of operation, the review must include retrospective review of 25% of the cases of patients admitted to the facility during that period.

(2) After the medical assistance facility's first 12 months of operation, the facility must collaborate and cooperate with the state PRO or its department approved equivalent, pursuant to a written agreement, in projects designed to identify and assess opportunities to improve the quality of patient care, the utilization of the facility, and the appropriateness of the discharge planning and the disposition of each of the facility's patients following treatment. Collaboration by the facility must include:

(a) Participating in the design of the projects;

(b) Providing medical records to the state PRO or its department approved equivalent for abstraction or completing the abstraction of records on site and submitting the results to the state PRO or its department approved equivalent;

(c) Assessing the results of the abstraction; and

(d) Developing plans necessary to ensure continuous improvement in the care provided to patients at the facility. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-101, 50-5-103 and 50-5-204, MCA; NEW, 1989 MAR p. 663, Eff. 4/28/89; AMD, 1996 MAR p. 682, Eff. 3/8/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1112 MEDICAL ASSISTANCE FACILITIES: INFECTION CONTROL (1) A medical assistance facility must:

(a) Ensure the facility constitutes a sanitary environment adequate to avoid sources and prevent transmission of infections and communicable diseases.

(b) Designate a member of the medical staff as infection control officer and ensure that the officer:

(i) develops and implements policies governing control of infections and communicable diseases;

(ii) develops a system for identifying, reporting, investigating, and controlling infections and communicable diseases of patients and personnel; and

(iii) maintains a log of incidents related to infections and communicable diseases. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-101, 50-5-103 and 50-5-204, MCA; NEW, 1989 MAR p. 663, Eff. 4/28/89; TRANS, from DHES, 2002 MAR p. 185.)

Rules 13 through 19 reserved

37.106.1120 MEDICAL ASSISTANCE FACILITIES: NURSING SERVICES (1) A medical assistance facility must have a nursing service that provides 24-hour nursing services whenever a patient is in the facility and that meets the following standards:

(a) The director of nursing services must be a licensed registered nurse and must:

(i) Determine the types and numbers of nursing personnel and staff necessary to provide nursing care; and

(ii) Schedule adequate numbers of licensed registered nurses, licensed practical nurses, and other personnel to provide nursing care as needed.

(b) A registered nurse must be on duty at least eight hours per day, and the director of nursing or another registered nurse designated as the director's alternate must be on call and available within 20 minutes at all times.

(c) The nursing service must have a procedure to ensure that all nursing personnel have valid and current licenses.

(d) The nursing staff must develop and keep current a nursing care plan for each patient.

(e) Upon admission of a patient to the facility, a registered nurse must assign the nursing care of that patient to other nursing personnel in accordance with the patient's needs and the specialized qualifications and competence of the nursing staff available.

(f) All drugs and biologicals must be administered by, or under the supervision of, nursing or other personnel in accordance with federal and state law and rules, including applicable licensing requirements, and in accordance with medical staff policies and procedures which have been approved by the facility's governing body.

(g) Each order for drugs and biologicals must be consistent with federal and state law and be in writing and signed by the practitioner who is both responsible for the care of the patient and legally authorized to prescribe.

(h) When an oral or telephonically-transmitted order must be used, it must be:

(i) Accepted only by personnel that are authorized to do so by the medical staff policies and procedures, consistent with federal and state law; and

(ii) Signed or initialled by the prescribing practitioner as soon as possible and in conformity with state and federal law.

(i) The facility must adopt a procedure for reporting to the attending practitioner adverse drug reactions and errors in administration of drugs. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-101, 50-5-103 and 50-5-204, MCA; NEW, 1989 MAR p. 663, Eff. 4/28/89; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1121 MEDICAL ASSISTANCE FACILITIES: PHARMACEUTICAL SERVICES (1) A medical assistance facility must have pharmaceutical services that meet the needs of the patients and comply with the following standards:

(a) The facility must have either a pharmacy directed by a registered pharmacist or a drug storage area under the supervision of a consulting pharmacist who must develop, supervise, and coordinate all the pharmacy services activities.

(b) The pharmacy or drug storage area must be administered in accordance with accepted professional principles.

(c) When a pharmacist is not available, drugs and biologicals may be removed from the pharmacy or storage area only by personnel designated in writing in medical staff and pharmaceutical services policies, in accordance with federal and state law.

(d) All compounding, packaging, and dispensing of drugs and biologicals must be under the supervision of a pharmacist and performed in a manner consistent with federal and state law.

(e) Drugs and biologicals must be kept in a locked storage area.

(f) Outdated, mislabeled, or otherwise unusable drugs and biologicals must be removed from the facility and destroyed; and

(g) Drug administration errors, adverse drug reactions, and incompatibilities must be immediately reported to the attending practitioner. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-101, 50-5-103 and 50-5-204, MCA; NEW, 1989 MAR p. 663, Eff. 4/28/89; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1122 MEDICAL ASSISTANCE FACILITIES: RADIOLOGIC SERVICES (1) If a medical assistance facility maintains, or has available, diagnostic radiologic services, they must meet the following standards:

(a) The radiologic services must be free from radiation hazards for patients and personnel.

(b) Periodic inspection of equipment must be made and hazards identified must be promptly corrected.

(c) Radiation workers must be checked periodically by the use of exposure meters or badge tests, to determine the amount of radiation to which they are routinely exposed.

(d) A qualified full-time, part-time, or consulting radiologist must be utilized to interpret those radiographic tests that are determined by the medical staff to require a radiologist's specialized knowledge.

(e) Only personnel designated as qualified by the medical staff, and meeting requirements of state law, may use the radiographic equipment and administer procedures.

(f) The radiologist or other practitioner who provides radiology services must sign each report containing his/her interpretations.

(g) The facility must maintain any radiographic studies and their interpretations for at least five years. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-101, 50-5-103 and 50-5-204, MCA; NEW, 1989 MAR p. 663, Eff. 4/28/89; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1123 MEDICAL ASSISTANCE FACILITIES: LABORATORY SERVICES (1) The medical assistance facility must maintain, or have available, clinical laboratory services adequate to fulfill the needs of its patients and meeting the following standards:

(a) The facility, at a minimum, must provide basic laboratory services essential to the immediate diagnosis and treatment of the patients, including:

(i) chemical examinations of urine by stick or tablet methods, or both (including urine ketones);

(ii) microscopic examinations of urine sediment;

(iii) hemoglobin or hematocrit;

(iv) blood sugar;

(v) gram stain;

(vi) examination of stool specimens for occult blood;

(vii) pregnancy tests;

(viii) primary culturing for transmittal to a medicare-certified laboratory; and

(ix) sediment rate, CBC.

(b) The facility must have a contractual agreement with a medicare-approved hospital or independent laboratory for any additional laboratory services that are needed by a patient.

(c) Emergency provision of basic laboratory services must be available 24 hours a day.

(d) The facility must assign personnel to direct and conduct the laboratory services.

(e) Only personnel designated as qualified by the medical staff by virtue of education, experience, and training may perform and report laboratory test results. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-101, 50-5-103 and 50-5-204, MCA; NEW, 1989 MAR p. 663, Eff. 4/28/89; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1124 MEDICAL ASSISTANCE FACILITIES: FOOD AND DIETETIC SERVICES (1) The medical assistance facility must have dietary services that are directed and staffed by adequate personnel and meet the following standards:

(a) The facility must assign an employee or contract with a consultant to direct the food and dietetic service and to be responsible for the daily management of the dietary service who is qualified by experience and training as a food service supervisor.

(b) The facility must utilize a qualified dietitian, full-time, part-time, or on a consultant basis.

(c) A therapeutic diet for a patient must be prescribed by the practitioner responsible for the care of that patient.

(d) Nutritional needs must be met in accordance with recognized dietary practices and, at a minimum, the recommended daily dietary allowances established by the Food and Nutrition Board of the National Research Council, National Academy of Sciences, 8th edition, 1974.

(e) A current therapeutic diet manual approved by the dietitian and medical staff must be readily available to all medical, nursing, and food service personnel.

(f) The department hereby adopts and incorporates by reference the recommended daily dietary allowances published in 1974 by the Food and Nutrition Board of the National Research Council, National Academy of Sciences, 8th edition, which set the minimum amounts of all nutrients required daily by most normal persons living in the U.S. under usual environmental stresses in order to maintain health, depending upon the age and sex of the individual. Copies of the recommended daily dietary allowances may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-101, 50-5-103 and 50-5-204, MCA; NEW, 1989 MAR p. 663, Eff. 4/28/89; TRANS, from DHES, 2002 MAR p. 185.)

Rules 25 through 29 reserved

37.106.1130 MEDICAL ASSISTANCE FACILITIES: OUTPATIENT SERVICES (1) If a medical assistance facility provides outpatient services, each outpatient must be examined by a practitioner and the services must meet the standards contained in ARM 37.106.1001.

(2) The department hereby adopts and incorporates by reference ARM 37.106.1001, which contains the licensure standards for facilities having outpatient services. A copy of ARM 37.106.1001 may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-101, 50-5-103 and 50-5-204, MCA; NEW, 1989 MAR p. 663, Eff. 4/28/89; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1131 MEDICAL ASSISTANCE FACILITIES: EMERGENCY SERVICES (1) A medical assistance facility must provide emergency services meeting the emergency needs of patients in accordance with acceptable standards of practice, including the following standards:

(a) Emergency services must be organized under the direction of a practitioner member of the medical staff.

(b) The services must be integrated with other departments of the facility.

(c) The medical staff must establish and assume continuing responsibility for policies and procedures governing medical care provided in the emergency services.

(d) The emergency services must comply with the rules governing emergency medical services, subchapters 2, 3 and 4 of ARM Title 37, chapter 104.

(e) The department hereby adopts and incorporates by reference subchapters 2, 3 and 4 of ARM Title 37, chapter 104, which contain the standards for all the various types of emergency medical services which may be provided. A copy of the above rules may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-101, 50-5-103 and 50-5-204, MCA; NEW, 1989 MAR p. 663, Eff. 4/28/89; AMD, 1994 MAR p. 2833, Eff. 10/28/94; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1132 MEDICAL ASSISTANCE FACILITIES: THIRD-PARTY SERVICES (1) The medical assistance facility must enter into agreements with one or more providers participating in medicare or medicaid to provide services meeting the needs of its patients which the facility itself is unable to meet. Examples of such providers include:

- (a) a provider of inpatient hospital care;
- (b) a provider of specialized diagnostic imaging or laboratory services that are not available at the facility;
- (c) a skilled nursing facility;
- (d) a home health agency.

(2) If any of the agreements referred to in (1) are not in writing, there must be evidence that patients referred to another provider by the facility are being accepted and treated.

(3) If the facility is unable to ensure that a practitioner is physically available to the facility within one hour after s/he is contacted, the facility must enter into a written agreement with a licensed ambulance service committing the service to be available to commence transport of a patient, within one hour after that patient first contacts the facility, to a facility providing the level of care needed by the patient. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-101, 50-5-103 and 50-5-204, MCA; NEW, 1989 MAR p. 663, Eff. 4/28/89; TRANS, from DHES, 2002 MAR p. 185.)

Subchapters 12 and 13 reserved

Subchapter 14

Minimum Standards for Chemical Dependency Facilities

37.106.1401 MINIMUM STANDARDS FOR CHEMICAL DEPENDENCY FACILITIES (1) A "chemical dependency treatment center" means a facility especially staffed and equipped to provide diagnosis, detoxification, treatment, prevention or rehabilitation services for individuals suffering from chemical dependency.

(2) An inpatient chemical dependency treatment center which is established in a general acute-care hospital does not require separate licensure. However, the certificate of need requirements of Title 50, chapter 5, subchapter 3, MCA, may apply.

(3) Freestanding detoxification and freestanding inpatient chemical dependency treatment centers shall be licensed separately as chemical dependency treatment centers.

(4) A chemical dependency treatment center must satisfy the program requirements set forth in ARM Title 37, chapter 27, subchapter 1.

(5) The department hereby adopts and incorporates by reference ARM Title 37, chapter 27, subchapter 1, with the exception of the following: ARM 37.27.101, 37.27.106, 37.27.128(6)(a), 37.27.129(5)(a), 37.27.130(5)(a) and 37.27.135(5)(a). ARM Title 37, chapter 27, subchapter 1 are rules which have been adopted by the department of public health and human services setting forth program requirements for alcohol and drug abuse facilities to receive approval from the department of public health and human services. Copies of these rules are available from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-201, 50-8-101, 50-8-102 and 50-8-105, MCA; NEW, 1984 MAR p. 1090, Eff. 7/27/84; TRANS, from DHES, 2002 MAR p. 185.)

Subchapter 15

Minimum Standards for Specialty
Care Health Care Facilities

Rules 01 through 04 reserved

37.106.1505 MINIMUM STANDARDS FOR A HOME HEALTH AGENCY

(1) A home health agency shall comply with the Conditions of Participation for Home Health Agencies as set forth in 42 CFR 405, Subpart L. A copy of the cited rule is available at the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1506

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

37.106.1506 MINIMUM STANDARDS FOR A HEALTH MAINTENANCE ORGANIZATION (REPEALED) (History: Sec. 50-5-103 and 50-5-404, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-404, MCA; NEW, 1980 MAR p. 1587, Eff. 6/13/80; TRANS, from DHES, 2002 MAR p. 185; REP, 2004 MAR p. 338, Eff. 2/13/04.)

Subchapters 16 and 17 reserved

Subchapter 18

Licensure of Specialty Mental Health Facilities

37.106.1801 SPECIALTY MENTAL HEALTH FACILITY: APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in this chapter conflict with the terms of ARM 37.106.1802, 37.106.1805, 37.106.1810 through 37.106.1814, 37.106.1820, 37.106.1821, 37.106.1825 through 37.106.1829, 37.106.1831 through 37.106.1833, 37.106.1841 through 37.106.1845, 37.106.1851 through 37.106.1853, the terms of ARM 37.106.1802, 37.106.1805, 37.106.1810 through 37.106.1814, 37.106.1820, 37.106.1821, 37.106.1825 through 37.106.1829, 37.106.1831 through 37.106.1833, 37.106.1841 through 37.106.1845, 37.106.1851 through 37.106.1853 will apply to specialty mental health facilities. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1802 SPECIALTY MENTAL HEALTH FACILITY: DEFINITIONS

As used in ARM 37.106.1801, 37.106.1802, 37.106.1805, 37.106.1810 through 37.106.1814, 37.106.1820, 37.106.1821, 37.106.1825 through 37.106.1829, 37.106.1831 through 37.106.1833, 37.106.1841 through 37.106.1845, 37.106.1851 through 37.106.1853, the following definitions apply:

(1) "Specialty mental health facility" means a health care facility that provides specialty mental health services in a residential setting to patients with mental health conditions associated with eating disorders, pathological gambling, and sexual disorders and may include a specialty unit attached to another type of licensed health care facility.

(2) "Addiction" includes habituation, and means a psychological dependence upon a substance or behavior for the purpose of achieving euphoria or temporary relief from painful stimuli, whether or not the stimuli are internal or external in origin, and which is associated with an eating disorder, pathological gambling, or a sexual disorder. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

Rules 03 and 04 reserved

37.106.1805 SPECIALTY MENTAL HEALTH FACILITY: MEDICAL RECORDS (1) A specialty mental health facility must maintain a medical records system in accordance with written policies and procedures, as well as meet the following standards:

(a) Employ adequate personnel to ensure prompt and systematic completion, filing, and retrieval of records.

(b) Create and maintain a record for each person receiving specialty mental health care services from the facility that includes, if applicable:

- (i) identification and social data;
- (ii) admitting diagnosis;
- (iii) pertinent medical history;
- (iv) properly executed consent forms;
- (v) reports of physical examinations, diagnostic and laboratory test results, and consultation findings;
- (vi) all physician's orders, nurses' notes, and reports of treatments and medications;
- (vii) final diagnosis;
- (viii) discharge summary; and
- (ix) any other pertinent information necessary to monitor the patient's prognosis.

(c) Include in each record the signatures of the physician or other health care professional authoring the record entries.

(d) Complete records of a discharged patient within 30 days after the discharge date and include, in addition to the information cited in (b) above, a recapitulation of the patient's period of treatment, a recommendation of the appropriate follow up or aftercare services for the patient, and a brief summary of the patient's medical and mental condition on discharge.

(e) Have written policies and procedures ensuring the confidentiality of patient records, and safeguards against loss, destruction or unauthorized use, in accordance with applicable state and federal law and including policies and procedures which:

- (i) govern the use and removal of records from the record storage area;
- (ii) specify the conditions under which information may be released and by whom;
- (iii) specify when the patient's consent is required for release of information, in accordance with Title 50, chapter 16, part 5, MCA, the Uniform Health Care Information Act.

(f) In addition to the above, adhere to the provisions of ARM 37.106.314.

(2) The department hereby adopts and incorporates by reference ARM 37.106.314, which contains medical records requirements for types of health care facilities other than hospitals. Copies may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

Rules 06 through 09 reserved

37.106.1810 SPECIALTY MENTAL HEALTH FACILITY:
ORGANIZATIONAL STRUCTURE; GOVERNING BODY (1) A specialty

mental health facility must have a governing body that is legally responsible for the conduct of the facility and that:

(a) Ensures that the medical and professional staff of the facility:

(i) are appointed by the governing body to the medical staff after the governing body considers the recommendations of the existing members of the medical staff;

(ii) have bylaws and written policies that are approved by the governing body;

(iii) are accountable to the governing body for the quality of care provided to patients; and

(iv) are selected on the basis of individual character, competence, training, experience, judgment, and professional qualifications according to the specific areas in which they are to provide medical treatment.

(b) Appoints a chief executive officer who is responsible for managing the facility.

(c) In accordance with a written policy ensures that:

(i) every patient is under the care of a psychiatrist; and

(ii) whenever a patient is admitted to the facility, the admission procedures required by ARM 37.106.1851 are followed.

(d) Prepares, adopts, reviews, and updates annually an overall institutional plan that includes the following:

(i) a system of financial management and accountability; and

(ii) a system that assures that members of the governing body and appropriate administrative and professional staff have adequate and comprehensive liability insurance.

(e) Maintains a list of all contracted services, including the scope and nature of the services provided, and ensures that a contractor providing services to the facility:

(i) furnishes services that permit the facility, including the contracted services, to comply with all applicable licensure standards; and

(ii) provides the services in a safe and effective manner that will ensure that a patient may be able to return to a community setting as soon as possible.

(f) Ensures that the medical and nursing staff of the facility are licensed, certified, or registered in accordance with Montana law and rules and that each staff member provides health services within the scope of his or her license, certification, or registration. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1811 SPECIALTY MENTAL HEALTH FACILITY:
ADMINISTRATOR (1) A specialty mental health facility must have an administrator who has formal training and/or experience, preferably in the administration of a mental health facility, which demonstrates an ability to perform the functions and duties required by these licensure rules.

(2) The facility must ensure that the administrator is on the premises the number of hours necessary to manage and administer the facility in compliance with these licensure rules. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1812 SPECIALTY MENTAL HEALTH FACILITY: MEDICAL AND PROFESSIONAL STAFF (1) A specialty mental health facility must:

(a) Have a single, organized professional staff with overall responsibility for the quality of all clinical care provided to patients and the professional practices of its members;

(b) Employ or contract with the numbers of qualified mental health professional and support staff necessary to adequately evaluate patients and to sufficiently participate in each individual treatment plan to its completion; thoroughly document such participation; formulate written, individualized, and comprehensive treatment plans; provide active treatment measures; and engage in discharge planning.

(c) Ensure that the medical staff adopts and enforces bylaws approved by the governing body that include:

(i) a description of the qualifications a medical and professional staff candidate must meet in order to be recommended to the governing body for appointment;

(ii) a statement of the duties and privileges of each category of medical and professional staff.

(iii) a requirement that a physical examination be made and medical history taken of a patient by a member of the medical staff no more than seven days before or 24 hours after the patient's admission to the facility.

(d) Ensure that the medical staff includes at least one Montana-licensed psychiatrist.

(e) Ensure that a staff psychiatrist does the following:

(I) Provides medical direction for the facility's residential mental health care activities and consultation for, and medical supervision of, mental health professional and non-physician health care staff;

(ii) Reviews and signs the records of each patient admitted; and

(iii) is directly involved with the mental health treatment of each admitted patient as determined in each individual treatment plan and documents that direct involvement.

(History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1813 SPECIALTY MENTAL HEALTH FACILITY: STAFF DEVELOPMENT (1) A staff development program must be provided for administrative, professional, and support personnel, and must be supervised and directed by a staff committee or qualified person.

(2) Staff development programs must be outlined in the facility's policies and procedures, with annual updates. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1814 SPECIALTY MENTAL HEALTH FACILITY: TREATMENT TEAM (1) A specialty mental health facility must have a multi-disciplinary treatment team supervised and directed by the admitting psychiatrist, and consisting of adequate numbers of individuals licensed, registered, or certified in the mental health disciplines appropriate to the condition of each patient.

(2) The treatment team for each patient must meet at least weekly with the supervising psychiatrist and document the progress of each patient according to each patient's individual treatment plan. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

Rules 15 through 19 reserved

37.106.1820 SPECIALTY MENTAL HEALTH FACILITY: QUALITY ASSURANCE (1) The governing body of the facility must ensure that there is an effective, ongoing, facility wide written quality assurance program and implementation plan in effect which ensures, monitors, and evaluates the quality of the patient care provided there and which includes the following:

(a) Identification of all health and safety aspects of each patient's individual treatment plan;

(b) Development and documentation of indicators that are used to monitor and evaluate the health and safety aspects of patient treatment and care;

(c) Documentation and evidence that the findings, conclusions, and results of corrective actions to improve patient care which are identified through the quality assurance program are applied in a manner which improves patient treatment and care.

(d) Consideration and documentation by the facility's medical and professional staff of the findings of the evaluation and the taking of subsequent remedial action, if necessary.

(e) Evaluation, with complete documentation, of all services provided by contractors.

(f) The taking and documentation of appropriate remedial action to address deficiencies found through the quality assurance program, as well as documentation of the outcome of the remedial action.

(g) Periodic review of all quality assurance activities, at least semi-annually, which is submitted in writing to the governing body and also made a part of the facility's medical records file. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1821 SPECIALTY MENTAL HEALTH FACILITY: UTILIZATION REVIEW (1) A specialty mental health facility must have in effect a utilization review plan to review services furnished by the facility to patients, either through contracted services or by members of its medical staff to patients, in order to determine through semi-annual review, whether utilization of services was appropriate, established policies were followed, and any changes are needed.

(2) Such a review mechanism shall consider, during each semi-annual review period, at least the following:

(a) the utilization of facility services, including at least the number of patients served and the volume of services;

(b) sample facility cases consisting of not less than 10% of both active and closed patient records;

(c) review of the sample cases to determine the medical necessity of the medical and professional services furnished, including drugs and biologicals; and

(d) the facility's health care policies. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

Rules 22 through 24 reserved

37.106.1825 SPECIALTY MENTAL HEALTH FACILITY: PHYSICAL PLANT (1) Each patient room in a specialty mental health facility must meet the following standards:

(a) No more than four patients may be housed in a room.

(b) Patient room areas, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, must be at least 100 square feet (9.29 square meters) in single-bed rooms and 80 square feet (7.43 square meters) per bed in multiple-bed rooms; minor encroachments, including columns and lavatories, that do not interfere with functions, may be ignored when determining space requirements for patient rooms.

(c) Multiple-bed rooms must allow a minimum clearance of 3 feet 8 inches (1.12 meters) at the foot of each bed to permit the passage of equipment and beds.

(d) Each room must have a window in accordance with section 7.28A(11) of the Guidelines for Construction and Equipment of Hospital and Medical Facilities (1992-1993 edition) published by the American institute of architects.

(e) In new construction, handwashing facilities must be provided.

(f) If a room is renovated and/or modernized, the lavatory must be added if it does not already exist, unless, in the case of a single bed room or a two-bed room, a water closet and lavatory are provided in a toilet room designed to serve that room.

(g) Each patient must have within his/her room a separate wardrobe, locker, or closet suitable for hanging full-length garments and for storing personal effects.

(2) A toilet room must:

(a) serve no more than four beds and not more than two patient rooms.

(b) contain a water closet and a door that either swings outward or is double-acting.

(c) contain a lavatory unless each patient room served by that toilet contains a lavatory for handwashing.

(d) have a floor area of not less than 15 square feet if it has one toilet and one lavatory.

(3) Separate toilet facilities and lockers shall be provided for employees.

(4) The facility's water supply system must meet the standards contained in ARM 17.38.207 and 37.111.115.

(5) The facility's wastewater system must meet the standards contained in ARM 16.20.636.

(6) Fixtures must meet the following standards:

(a) Toilets must be:

(i) provided in numbers ample for use according to the number of residents, at least one toilet for every four residents or fraction thereof.

(ii) if for resident use, provided with grab bars of a type approved by the department on at least one side.

(iii) ventilated, with a mechanical system vented to the outdoors that provides a minimum of four air changes per hour.

(iv) where more than one toilet is provided in the same room, partitioned each from the other, including a door capable of remaining closed which affords full visual privacy.

(v) be accessible to each resident without the resident having to enter a kitchen, dining room, living area, or another resident's room.

(b) Sinks and handwashing fixtures must be:

(i) provided close to each work station and in each utility room;

(ii) if used by staff, equipped with valves which can be operated without the use of hands;

(iii) provided separately in the main kitchen and located so that the person in charge may supervise handwashing by food service personnel; and

(iv) supplied with a paper towel dispenser, soap dispenser, and a covered wastebasket.

(7) A bathroom must:

(a) when individual bathing facilities are not provided in patient rooms, include a bathtub or shower with approved grab bars and serve no more than 12 licensed beds or fraction thereof.

(b) be ventilated by a mechanical system to the outdoors providing a minimum of 10 air changes per hour.

(c) have a floor entirely covered with a non-absorbent covering approved by the department. [Note: A continuous solid covering is preferred over block tile, but is not mandatory.]

(d) contain an adequate supply of toilet tissue, towels, soap, and wastebaskets.

(e) if it contains a shower or bath serving more than one patient, provide a private area for bathing, drying, and dressing.

(8) At least one resident bathroom for residents with physically handicapping conditions must be provided that has space for a wheelchair and an assisting attendant, whether or not any of the residents are classified as handicapped.

(9) Service areas must meet the following standards:

(a) The services noted below must be located in or readily available to each nursing unit.

(i) Administrative center or nurses' station.

(ii) Nurses' office for floor staff.

(iii) Administrative supplies storage.

(iv) A lavatory for handwashing.

(v) Charting facilities.

(vi) Toilet room(s) for staff.

(vii) Staff lounge facilities; these may be on another floor so long as they are centrally located.

(viii) Closets or cabinet compartments for the personal effects of nursing personnel; however, coats may be stored in closets or cabinets on each floor or in a central staff locker area.

(ix) Multipurpose room(s) for staff and patient conferences, education, demonstrations, and consultation; such a room may be on another floor if convenient for regular use and may serve several nursing units and/or departments.

(x) Examination and treatment room(s), unless all rooms in the facility are single-bed patient rooms; the room(s) may serve several nursing units and may be on a different floor if conveniently located for routine use.

(xi) Clean workroom or clean holding room.

(xii) Soiled workroom.

(xiii) Drug distribution station.

(xiv) Clean linen storage in each nursing unit.

(xv) Nourishment station.

(xvi) An ice machine in each nursing unit to provide ice for treatments and nourishment.

(xvii) Equipment storage room.

(xviii) Showers, bathtubs, and sitz baths.

(xix) Emergency equipment storage space.

(xx) At least two separate social spaces, one appropriate for noisy activities and one for quiet activities.

(xxi) Space for group therapy.

(xxii) Occupational therapy unit.

(b) The size and location of each service area will depend upon the numbers and types of beds served.

(c) Identifiable spaces are required for each of the service areas listed in (a) above, but where the area is described as a room or office, a separate, enclosed space for the area is required; otherwise, the described area may be a specific space in another room or common area.

(d) Each service area may be arranged and located to serve more than one nursing unit but, unless noted otherwise in this subsection, at least one of each type of service area must be provided on each nursing floor.

(e) Examination rooms must have a minimum floor area of 120 square feet (11.2 square meters) excluding space for vestibule, toilets, and closets, and contain a lavatory or sink equipped for handwashing, storage facilities, and a desk, counter, or shelf space for writing.

(f) A clean workroom or clean holding room used must contain:

(i) a work counter and handwashing and storage facilities if it is used for preparing patient care items.

(ii) storage facilities alone if the room is used only for storage and holding as part of a system to distribute clean and sterile supply materials.

(g) A soiled work room must contain:

(i) a clinical sink or equivalent flushing-rim fixture, a sink equipped for handwashing, a work counter, waste receptacles, and a linen receptacle. Rooms used only for temporary holding of soiled material need not contain handwashing sinks or work counters. However, if the flushing-rim sink is omitted, other provisions for disposal or liquid waste at each unit may be added.

(h) A drug distribution station must:

(i) be made for 24-hour distribution of medications, for example, by distributing medications from a medicine preparation room or unit or utilizing a self-contained medicine dispensing unit, or by another system;

(ii) if a medicine preparation room or unit, be under visual control of nursing staff; contain a work counter, sink, refrigerator, and locked storage for controlled drugs; and have a minimum area of 50 square feet (4.65 square meters);

(iii) if a self-contained medicine dispensing unit, be located at the nurses station, in the clean workroom, or in an alcove.

(iv) have convenient access to handwashing facilities; handwashing facilities do not include cup-sinks.

(i) Clean linen storage must:

(i) be located either within the clean workroom, a separate closet, or some other distribution system on each floor that is approved by the department; and

(ii) if a closed cart system is used, be out of the path of normal traffic, e.g. in an alcove.

(j) A nourishment station must:

(i) contain a sink, work counter, refrigerator, storage cabinets, and equipment for serving nourishment between scheduled meals;

(ii) include provisions and space for separate temporary storage of unused and soiled dietary trays not picked up at meal time; and

(iii) have convenient access to a laboratory.

(k) Ice-making equipment must:

(i) either be located in the clean work room or at the nourishment station under staff control; and

(ii) if producing ice for human consumption, be a self-dispensing ice maker.

(l) Emergency equipment storage space must meet the following standards:

(i) The space, such as a cardiopulmonary resuscitation (CPR) cart, must be under direct control of the nursing staff;

(ii) The space must be directly accessible from the unit or floor and may serve more than one nursing unit on a floor;

(iii) In addition to separate janitor's closets that may be required for the exclusive use of specific services, at least one janitor's closet per floor must contain a service sink or receptor and provisions for storage of supplies.

(m) Social spaces:

(i) must contain at least 40 square feet (3.72 square meters) per patient in their combined area;

(ii) must contain at least 120 square feet (11.1 square meters) in each; and

(iii) may share space with dining activities.

(n) Group therapy space may be combined with the social space designated for quiet activities when the treatment unit accommodates no more than 12 patients, and when the space in question contains at least 225 square feet (21 square meters) in an enclosed private area.

(o) An occupational therapy unit:

(i) must contain 15 square feet (1.39 square meters) of separate space per patient in a treatment unit for occupational therapy, with a minimum total area of at least 200 square feet (18.6 square meters), whichever is greater;

(ii) must provide handwashing facilities, work counters, and storage;

(iii) may serve more than one nursing unit; and

(iv) may perform its functions within the noisy activities area, if at least an additional 10 square feet (0.9 square meters) per patient served is included and the treatment unit contains less than 12 beds.

(p) One laboratory may serve the nurses' station, drug distribution station, and nourishment center so long as it is convenient to each.

(q) Closets or cabinets for the personal effects of nursing personnel must be securable and, at a minimum, large enough for purses and billfolds.

(10) Where the requirements of this section appear in conflict with those of NFPA 101, chapters 22 and 23, the requirements of this section shall apply.

(11) The department hereby adopts and incorporates by reference:

(a) section 7.28A(11) of the Guidelines for Construction and Equipment of Hospital and Medical Facilities (1992-1993 edition) published by the American Institute of Architects, a manual which specifies architectural requirements to ensure comfort, aesthetics, and safety in hospital and medical facilities. A copy of section 7.28A(11) or the entire manual may be obtained from the American Institute of Architects Press, 1735 New York Avenue NW, Washington, DC 20006.

(b) ARM 17.38.207, stating maximum microbiological contaminant levels for public water supplies, and ARM 37.111.115, which outlines the department construction, operation, and maintenance standards for springs, wells, and cisterns and other water supply system minimum requirements. Copies of the rules may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(c) ARM 16.20.636, outlining department construction and operation standards and other minimum requirements for sewage systems. A copy of the rule may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; AMD, 1995 MAR p. 851, Eff. 5/12/95; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1826 SPECIALTY MENTAL HEALTH FACILITY: LIFE SAFETY AND BUILDING CODE (1) A specialty mental health facility must be in compliance with the provisions of the 1994 National Fire Protection Association (NFPA) 101 Life Safety Code, chapters 22 and 23, residential occupancy.

(2) The department hereby adopts and incorporates by reference the 1994 NFPA 101 Life Safety Code, chapters 22 and 23, residential occupancy. Copies of the codes may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; AMD, 1995 MAR p. 851, Eff. 5/12/95; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1827 SPECIALTY MENTAL HEALTH FACILITY: PHYSICAL ENVIRONMENT (1) The facility must maintain adequate facilities for its services, the extent and complexity of facilities being determined by the services offered.

(2) The facility must be constructed, equipped, and maintained to protect the health and safety of patients, personnel, and the public.

(3) The facility must be constructed to prevent vermin problems.

(4) The facility must be kept clean and free of odors.

(5) Daily housekeeping services must be provided.

(6) Walls, ceilings, floors, and furniture must be kept clean and in good repair.

(7) Electrical, mechanical, plumbing, and heating systems must be in good, safe condition.

(8) Facilities, supplies, and equipment must be maintained to ensure an acceptable level of safety and quality.

(9) The facility must establish a written preventive maintenance program to ensure that all equipment is operative. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1828 SPECIALTY MENTAL HEALTH FACILITY:
ENVIRONMENTAL CONTROL (1) A specialty mental health facility must be constructed and maintained so as to prevent entrance and harborage of rats, mice, insects, flies or other vermin.

(2) Hand cleansing soap or detergent and individual towels must be available at each lavatory in the facility. A waste receptacle must be located near each lavatory.

(3) The facility must develop and follow a written infection surveillance program describing the procedures that must be utilized by the entire facility staff in the identification, investigation, and mitigation of infections acquired in the facility.

(4) Cleaning devices used for lavatories, toilet bowls, urinals, showers, or bathtubs may not be used for other purposes, and those utensils used to clean toilets or urinals must not be allowed to contact other cleaning devices. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1829 SPECIALTY MENTAL HEALTH FACILITY: INFECTION CONTROL (1) A specialty mental health facility must ensure that:

(a) the facility has an effective facility wide infection control surveillance program developed for the identification, investigation, prevention and control of nosocomial infections.

(b) the facility has written policies and procedures that describe the types of surveillance carried out to monitor the rates of nosocomial infections, the systems used to collect and analyze data, and the activities carried out to prevent and control infection.

(c) A staff member is designated as a manager of the infection control program who has education, training or experience related to infection control, that facility records contain documented evidence of the manager's qualifications, and that the manager participates in continuing education in the area of infection control.

(d) A multidisciplinary committee oversees the program for surveillance, prevention, and control of infection, a committee that includes the designated infection control manager and representatives from the professional staff; administration; and housekeeping, laundry, dietary, maintenance and pharmacy services; and meets whenever the committee members determine the facility needs such a meeting.

(e) Each department, including housekeeping, laundry, dietary, maintenance, pharmacy, and nursing/medical, develops and implements policies and procedures which reflect current and accepted infection control standards of practice, and that these policies are updated and reviewed annually by the infection control committee.

(2) The facility must be in compliance with Title 75, part 10, MCA, the Infectious Waste Management Act.

(3) The department hereby adopts and incorporates by reference Title 75, part 10, MCA, containing requirements for health care facilities in handling of infectious wastes. A copy of the law may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

Rule 30 reserved

37.106.1831 SPECIALTY MENTAL HEALTH FACILITY: EMERGENCY SERVICES (1) The facility must ensure that patients have access to emergency services and to more intensive levels of care, including acute or inpatient psychiatric care.

(2) The facility must have an agreement with an outside source for emergency medical and inpatient psychiatric services to ensure that they are immediately available to patients who may need such services. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1832 SPECIALTY MENTAL HEALTH FACILITY: DISASTER PLAN (1) A specialty mental health facility must develop a disaster plan in conjunction with other emergency services in the community which includes a procedure that will be followed in the event of a natural or man-caused disaster. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1833 SPECIALTY MENTAL HEALTH FACILITY: LAUNDRY AND BEDDING (1) If a specialty mental health facility processes its own laundry on the facility site, it must:

(a) Set aside a room for laundry and utilize it solely for that purpose.

(b) Equip the laundry with a mechanical washer and dryer (or additional machines if necessary to handle the laundry load), handwashing facilities, mechanical ventilation to the outside, a fresh air supply, and a hot water supply system which supplies the washer with water of at least 160°F (71°C) during each use for 25 minutes, or, if lower temperatures are used, with chemicals suitable for low temperature washing.

(c) Sort and store soiled laundry in an area separate from that used to sort and store clean laundry.

(d) Provide well maintained carts or other containers impervious to moisture to transport laundry, keeping those used for soiled laundry separate from those used for clean laundry.

(e) Dry all bed linen, towels, and washcloths in a mechanical dryer.

(f) Protect clean laundry from contamination.

(g) Ensure that facility staff use hygienic techniques while handling soiled and clean laundry, including:

(i) covering their clothing while working with soiled laundry;

(ii) using separate clean covering for their clothes while handling clean laundry; and

(iii) washing their hands both after working with soiled laundry and before they handle clean laundry.

(2) The facility must maintain a linen supply adequate to provide changes of bed and bath linens at appropriate intervals.

(History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

Rules 34 through 40 reserved

37.106.1841 SPECIALTY MENTAL HEALTH FACILITY: REQUIRED TREATMENT SERVICES (1) A specialty mental health facility must:

(a) Provide an individually planned regimen of 24-hour evaluation, care, and treatment for each patient with mental health conditions associated with the addiction that the regimen is designed to treat, prepared and delivered by mental health professionals, pursuant to a defined set of written policies and procedures;

(b) Have permanent facilities that include, at least, inpatient beds;

(c) Utilize a multi-disciplinary mental health staff appropriate and sufficient to care for patients whose emotional/behavioral problems are severe enough to require specialty mental health treatment services as determined through individual psychiatric evaluations and detailed admission criteria; and

(d) Provide 24-hour staff observation to patients, and have medical and/or mental health monitoring and treatment available to them by qualified professionals on a 24-hour basis;

(2) If medical monitoring and treatment is necessary for a patient on a continuous basis, then that individual must be transferred to an appropriate inpatient facility immediately. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1842 SPECIALTY MENTAL HEALTH FACILITY: FOOD AND NUTRITION SERVICES (1) A specialty mental health facility must have nutrition services that are directed and staffed by adequate personnel and meet the following standards:

(a) The facility must assign an employee or contract with a consultant who is qualified by experience and training as a food service supervisor to direct the food and nutrition service and to be responsible for the daily management of the nutrition service.

(b) The facility must utilize a nutritionist licensed in Montana, on a full-time, part-time, or consultant basis.

(c) Any therapeutic diet for a patient must be prescribed by the practitioner responsible for the care of that patient.

(d) Nutritional needs must be met in accordance with recognized dietary and nutrition practices and, at a minimum, the recommended daily dietary allowances established by the Food and Nutritional Board of the National Research Council, National Academy of Sciences, 10th edition, 1989.

(2) The department hereby incorporates by reference the recommended daily dietary allowances established by the Food and Nutritional Board of the National Research Council, National Academy of Sciences, 10th edition, 1989, which set minimum nutrition requirements for human beings. A copy of the above dietary allowances may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

37.107.1843 SPECIALTY MENTAL HEALTH FACILITY: NURSING SERVICES (1) A specialty mental health facility must provide 24-hour nursing services and meet the following standards:

(a) The director of nursing services must be a licensed registered nurse and must:

(i) determine the types and numbers of nursing personnel and staff necessary to provide nursing care; and

(ii) schedule adequate numbers of licensed registered nurses, licensed practical nurses, and other personnel to provide nursing care as needed.

(b) A registered nurse must be on duty at least eight hours per day, and the director of nursing or another registered nurse designated as the director's alternate must be on call and available within 20 minutes at all times.

(c) The nursing service must have a procedure to ensure that all nursing personnel have valid and current Montana nursing licenses.

(d) The nursing staff must develop and keep current a nursing care plan for each patient when a nursing care plan is required.

(e) Upon admission of a patient to the facility, a registered nurse must assign the nursing care of that patient to other nursing personnel in accordance with the patient's needs as determined by the admitting psychiatrist and the specialized qualifications and competence of the nursing staff.

(f) All drugs and biologicals must be administered by, or under the supervision of, nursing or other qualified medical personnel in accordance with federal and state law and rules, including applicable licensing requirements, and in accordance with medical staff policies and procedures which have been approved by the governing body.

(g) Each order for drugs and biologicals must be consistent with federal and state law and be in writing and signed by the practitioner who is both responsible for the care of the patient and legally authorized to prescribe.

(h) When an oral or telephonically-transmitted order must be used, it must be:

(i) accepted only by personnel that are authorized to do so by the medical staff policies and procedures, consistent with federal and state law; and

(ii) signed or initialed by the prescribing practitioner as soon as possible and in conformity with state and federal law.

(i) The facility must adopt a procedure for reporting to the attending practitioner adverse drug reactions and errors in administration of drugs. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1844 SPECIALTY MENTAL HEALTH FACILITY:
PHARMACEUTICAL SERVICES (1) A specialty mental health facility must have pharmaceutical services that meet the needs of the patients and include either a pharmacy directed by a registered pharmacist or a drug storage area under the supervision of a consulting pharmacist who develops, supervises, and coordinates all the facility's pharmacy services.

(2) The facility must ensure that:

(a) The pharmacy or drug storage area is administered in accordance with accepted professional principles.

(b) When a pharmacist is not available, drugs and biologicals are removed from the pharmacy or storage area solely by the personnel designated in writing in medical staff and pharmaceutical services policies, and in a manner consistent with federal and state law.

(c) All compounding, packaging, and dispensing of drugs and biologicals is under the supervision of a pharmacist and performed in a manner consistent with federal and state law and rules.

(d) Drugs and biologicals are kept in a locked storage area.

(e) Outdated, mislabeled, or otherwise unusable drugs and biologicals are removed from the facility and destroyed.

(f) Drug administration errors, adverse reactions, and incompatibilities are immediately reported to the attending practitioner. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

36.106.1845 SPECIALTY MENTAL HEALTH FACILITY: OUTPATIENT SERVICES (1) If the specialty mental health facility provides outpatient services, each outpatient must be examined by a psychiatrist licensed in Montana and the services must meet the standards contained in ARM 37.106.1001.

(2) The department hereby incorporates by reference ARM 37.106.1001, which contains minimum licensure standards for outpatient facilities. Copies of ARM 37.106.1001 may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

Rules 46 through 50 reserved

36.106.1851 SPECIALTY MENTAL HEALTH FACILITY: ADMISSION PROCEDURES

(1) A specialty mental health facility must develop, maintain, and implement admission procedures designed to ensure that no client is admitted prior to the facility's documented determination of its ability to meet the needs of the client based on a documented appraisal of the client's individual service needs.

(2) The facility must assign a psychiatrist licensed in Montana to admit all patients according to a defined set of admission criteria based upon the Diagnostic and Statistical Manual III-R (DSM III-R) of the American Psychiatric Association and may admit only those patients whose mental health conditions are associated with addictions related to eating disorders (codes 307.10, 307.50, 307.51, 307.52, and 307.53 in the DSM III-R), pathological gambling (code 312.31 in the DSM III-R), or sexual disorders (codes 302.20, 302.30, 302.40, 302.71, 302.72, 302.79, 302.81, 302.82, 302.83, 302.84, 302.89, and 302.90 in the DSM III-R).

(3) Whenever a patient is admitted to the facility by a physician other than a psychiatrist, the facility must assure that the physician consults with the facility psychiatrist, by phone or otherwise, within 12 hours after admission, that a written notation of that consultation and the psychiatrist approval of the admission for a mental health condition or suspected mental health condition is made and kept in the patient's records, and that a psychiatric evaluation is conducted in accordance with the standards in (4) below prior to admission.

(4) Each patient must receive a psychiatric evaluation that must be completed by a psychiatrist licensed in Montana prior to admission unless (5) below applies; include a medical history; contain a record of mental status; note the onset of illness and the circumstances leading to admission; describe attitudes and behavior; estimate intellectual functioning, and orientation; and include an inventory of the patient's assets in descriptive rather than interpretive fashion.

(5) If an individual seeks admission or is referred to the facility outside of the hours of 6:00 a.m. to 7:00 p.m., Monday through Friday, or during national holidays, then the facility may allow that person temporary occupancy under the direction of a Montana licensed physician or Montana licensed psychiatrist until the psychiatric evaluation can be conducted during the facility's next regularly scheduled business day.

(6) If an individual is referred to the facility by a licensed psychiatrist or licensed physician who is not affiliated with the facility, the psychiatric evaluation must still be completed by the facility's staff psychiatrist within the time frame otherwise prescribed for such an evaluation. If a psychiatric evaluation has been conducted by a Montana-licensed psychiatrist not affiliated with the facility, the staff psychiatrist must review and approve the evaluation and note such review and approval in the patient's records.

(7) When indicated, a complete neurological examination must be conducted within 72 hours of admission.

(8) A licensed physician must conduct a physical examination of each patient within 24 hours after or seven days prior to that patient's admission.

(9) The department hereby incorporates by reference codes 302.20, 302.30, 302.40, 302.71, 302.72, 302.79, 302.81, 302.82, 302.83, 302.84, 302.89, 302.90, 307.10, 307.50, 307.51, 307.52, 307.53, and 312.31 of the DSM III-R of the American Psychiatric Association, which contain descriptions of various diagnoses of mental disorders associated with eating disorders, pathological gambling, and sexual disorders. A copy of the manual may be obtained from the American Psychiatric Association, 1700 18th Street NW, Washington, D.C. 20009. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1852 SPECIALTY MENTAL HEALTH FACILITY:
PROHIBITIONS (1) A specialty mental health facility may not admit as a patient any person who:

- (a) does not voluntarily seek admission;
- (b) requires physical or chemical restraints;
- (c) is non-ambulatory or bedridden;
- (d) may have impaired judgement or is incapable of appropriate physical action for self-preservation under emergency conditions;
- (e) requires a medication regime:
 - (i) to orient him or her to reality;
 - (ii) for stabilization or any other purpose related to behavior modification;
 - (iii) for a mental health condition unrelated to an eating disorder, pathological gambling, or sexual dysfunction; or
 - (iv) that would otherwise suggest that the person is in need of inpatient psychiatric treatment on such medications;
- (f) requires intensive supervision or specialized therapeutic interaction where medical or psychiatric attention or monitoring and treatment is necessary on a continuous basis as determined through a medical or psychiatric evaluation;
- (g) requires a treatment that focuses on management of a psychiatric condition that may endanger the person, facility, staff, or others, as determined through a psychiatric evaluation prior to admission;
- (h) requires electro-convulsive therapy;
- (i) requires a locked environment; or
- (j) requires treatment for a mental health condition other than one associated with an addiction.

(2) For purposes of this rule, a person is ambulatory if he or she is capable of self-mobility, either with or without mechanical assistance; if mechanical assistance is necessary, a person is considered ambulatory only if he or she can, without help from another person, utilize the mechanical assistance, exit and enter the facility, or access all common areas in the facility. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1853 SPECIALTY MENTAL HEALTH FACILITY: TREATMENT PROGRAM (1) Each patient must have an individual comprehensive treatment plan that must be based on an inventory of the patient's strengths and disabilities or mental impairment as defined by the mental health professionals on the multi-disciplinary treatment team and approved by the evaluating or staff psychiatrist.

(2) An initial treatment plan for each patient must be formulated, written and interpreted to the staff by the staff psychiatrist as a part of the admission process.

(3) A comprehensive treatment plan for each patient must be formulated no later than three full working days after admission by a multi-disciplined treatment team and the staff psychiatrist, and placed in the patient's records immediately following approval by the evaluating or staff psychiatrist. The staff psychiatrist and multi-disciplinary professional staff must also participate in the preparation of any major revisions of the comprehensive plan.

(4) The comprehensive treatment plan must:

(a) be based on the patient's psychiatric evaluation;

(b) include clinical consideration of the patient's physical, developmental, psychological, age appropriate, family, educational, social, and recreational needs;

(c) specify the reason for admission and specific treatment goals, stated in measurable terms, including a projected timeframe for completed treatment; treatment modalities to be used; staff who are responsible for coordinating and carrying out the treatment; and expected length of stay and appropriate aftercare planning.

(5) The facility must supply, to each individual being admitted and his or her family, significant other, or referral source, a description, in writing or publication form, of the treatment modalities it provides, including content, methods, equipment, and personnel involved. Each treatment program must conform to the stated purpose and objectives of the facility.

(6) A multi-disciplinary treatment team must provide:

(a) daily clinical services to each patient to assess and treat the person's individual needs, services including appropriate medical, psychological, and health education services; and

(b) individual, family and group psychological counseling; and

(c) access to family members or spouses as part of the treatment plan of each patient when such involvement can be beneficial.

(7) Upon admission of each patient, implementation of a discharge planning program must begin which will ensure that:

(a) discharge planning is documented in the individual treatment plan for each patient; and

(b) each patient, along with the necessary medical and other treatment information, is transferred or referred to appropriate facilities, agencies, or outpatient services, as needed, for continued, follow up, or ancillary care. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

37.106.1854 SPECIALTY MENTAL HEALTH FACILITY: PATIENT RIGHTS (1) A specialty mental health facility shall have written policies and procedures to assure the individual patient the right to dignity, privacy, and safety, and shall support and protect the basic human, civil, and constitutional rights of the individual patient.

(2) A written policy and procedure approved by the governing body shall provide a description of the patient's rights and the means by which these rights are protected and exercised.

(3) At the point of admission, the facility shall provide the patient and family, designated relative, guardian, or custodian, with a clearly written and readable statement of patients' rights and responsibilities. The statement shall be read to the patient and family, guardian, or custodian if any cannot read, and shall cover, at a minimum:

(a) each patient's access to treatment, regardless of race, religion or ethnicity;

(b) each patient's right to recognition and respect of his or her personal dignity in the provision of all treatment and care;

(c) each patient's right to be provided treatment and care in the least restrictive environment possible;

(d) each patient's right to an individualized treatment plan;

(e) each patient's and family's participation in planning for treatment;

(f) the nature of care, procedures, and treatment that he or she will receive;

(g) the risks, side effects, and benefits of all medications and treatment procedures used;

(h) the right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility when the patient refuses treatment, or, in accordance with legal and professional standards, to terminate the relationship with the patient upon reasonable notice; and

(i) the patient and family members' right to access to a patient advocate.

(4) The rights of patients must be written in language which is understandable to the patient, his or her family, custodian, or guardian, and must be posted in appropriate areas of the facility.

(5) The policy and procedure concerning patient rights shall assure and protect the patient's personal privacy within the constraints of his or her treatment plan. These rights to privacy shall at least include:

(a) visitation by the resident's family, relatives, guardian, or custodian in a suitable private area of the facility;

(b) sending and receiving mail without hindrance or censorship; and

(c) telephone communications with the patient's family, relatives, guardian, or custodian at a reasonable frequency.

(6) If any rights to privacy must be limited, the patient and his or her family, guardian, or custodian shall receive a full explanation. Limitations must be documented in the patient's record and their therapeutic effectiveness must be evaluated and documented by professional staff every seven days.

(7) The right to initiate a complaint or grievance procedure and the means for requesting a hearing or review of a complaint must be specified in a written policy approved by the governing body and made available to patients, family, guardians, and custodians responsible for the patient. The procedure shall indicate:

(a) to whom the grievance is to be addressed; and

(b) steps to be followed for filing a complaint, grievance, or appeal.

(8) The patient and his or her family, guardian, or custodian must be informed of the current and future use and disposition of products of special observation and audio visual techniques such as one-way vision mirrors, tape recorders, television, movies, or photographs.

(9) The policy and procedure regarding patient's rights shall ensure the patient's right to confidentiality of all information recorded in his record maintained by the facility. The facility shall ensure the initial and continuing training of all staff in the principles of confidentiality and privacy.

(10) The patient may be allowed to work for the facility only under the following conditions:

- (a) the work is part of the individual treatment plan;
- (b) the work is performed voluntarily;
- (c) the patient receives wages commensurate with the economic value of the work;
- (d) the work project complies with applicable law and regulations; and

(e) the performance of tasks related to the responsibilities of family-like living, such as laundry and housekeeping, are not considered work for the facility and need not be compensated or voluntary.

(11) Measures utilized by the facility to discipline patients must be:

(a) established by written policy and procedure developed in consultation with professional and direct care staff and approved by the governing body;

(b) fully explained to each patient and the patient's family, guardian, or custodian;

(c) fair, consistent, and administered based on the individual's needs and treatment plan.

(12) The facility shall prohibit all cruel and unusual disciplinary measures, including but not limited to the following:

- (a) corporal punishment;
- (b) forced physical exercise;
- (c) forced fixed body positions;
- (d) group punishment for individual actions;
- (e) verbal abuse, ridicule, or humiliation;
- (f) denial of three balanced nutritional meals per day;
- (g) denial of clothing, shelter, bedding or personal hygiene needs;
- (h) denial of access to educational services;
- (i) denial of visitation, mail, or phone privileges for punishment;
- (j) exclusion of the patient from entry to his or her assigned living quarters; and
- (k) restraint or seclusion as a punishment or employed for the convenience of the staff.

(13) Written policy shall prohibit patients from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct care staff from administering disciplinary measures to patients.

(14) Written rules of patient conduct must be:

(a) developed in consultation with the professional and direct care staff and approved by the governing body;

(b) developed with the participation of patients to a reasonable and appropriate extent; and

(c) based on generally acceptable normal and natural behavior for the patient population served.

(15) The application of disciplinary measures should correlate with the violation of established rules. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1991 MAR p. 2454, Eff. 12/13/91; TRANS, from DHES, 2002 MAR p. 185.)

Subchapter 19

Minimum Standards for Mental Health Centers

37.106.1901 MENTAL HEALTH CENTER: APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapters 3, 4, 6, 10, 11, 14, 15, 22 and 23 conflict with the terms of this subchapter, the terms of this subchapter will apply to mental health centers. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS, from DHES, 2002 MAR p. 916.)

37.106.1902 MENTAL HEALTH CENTER: DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) "Administrator" means a designated individual having daily overall management responsibility for the operation of a mental health center.

(2) "Adult day treatment" means a program which provides a variety of mental health services to adults with mental illnesses.

(3) "Chemical dependency services" means:

(a) screening of a client for substance abuse issues by the mental health center through its clinical intake assessment;

(b) as indicated by the substance abuse screening, the provision or arrangement by the mental health center for a client to be evaluated by a licensed addiction counselor;

(c) in accordance with the evaluation by a licensed addiction counselor, the provision or arrangement by the mental health center of chemical dependency treatment by a licensed addiction counselor or state-approved chemical dependency treatment program; and

(d) the integration and coordination by the mental health center of the client's mental health treatment with the chemical dependency treatment.

(4) "Child and adolescent" means a person 17 years of age or younger and includes students up to 21 years of age who still attend a secondary public school.

(5) "Child and adolescent day treatment" means a program which provides an integrated set of mental health, education and family intervention services to children or adolescents with a serious emotional disturbance.

(6) "Client" means an adult, child or adolescent, or resident receiving services from a mental health center.

(7) "Community-based psychiatric rehabilitation and support" means the definition as defined in ARM 37.88.901.

(8) "Community residential facility" means the definition provided in 76-2-411, MCA.

(9) "Comprehensive school and community treatment program (CSCT)" means a comprehensive, planned course of community mental health outpatient treatment provided in cooperation with the school district where the child or adolescent with a serious emotional disturbance (SED) resides. The program must be provided by a licensed mental health center with an endorsement under ARM 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965.

(10) "Crisis stabilization program" means 24 hour supervised treatment for adults with a mental illness for the purpose of stabilizing the individual's symptoms.

(11) "Crisis telephone services" means 24 hour telephone response to mental health emergencies for the mental health center's clients.

(12) "Guardian" means a person appointed by a court to make medical, and possibly financial, decisions as provided in Title 72, chapter 5, MCA.

(13) "Individualized education program" (IEP) means a written plan developed and implemented for each student with a disability in accordance with 34 CFR 300.341 through 300.350 as revised as of July 1, 1995. The department adopts and incorporates by reference 34 CFR 300.341 through 300.350. A copy of the regulations may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(14) "Individualized treatment plan" means a written plan that outlines individualized treatment activities for maximum reduction of mental disability and restoration of the client's ability to function adequately in the family, at work or school, and as a member of the community.

(15) "In-training practitioner services" means the definition as defined in ARM 37.88.901.

(16) "Intensive case management" means the activities of a single person or team that assists individuals with mental illness to make informed choices for community services which seek to maximize their personal abilities and enable growth in some or all aspects of the individual's vocational, educational, social, and health related environments.

(17) "Licensed health care professional" means a licensed physician, physician assistant-certified, or advanced practice registered nurse who is authorized to prescribe medication within the scope of the license.

(18) "Licensed mental health professional" means:

(a) a physician, clinical psychologist, social worker, or professional counselor licensed to practice in Montana;

(b) an occupational therapist licensed to practice in Montana who has had at least three years experience dedicated substantially to serving persons with serious mental illnesses and is working in a child and adolescent day treatment program or adult day treatment program; or

(c) a registered nurse who has had at least three years experience dedicated substantially to serving persons with serious mental illnesses and is licensed to practice in Montana.

(19) "Medical director" means a physician licensed by the Montana board of medical examiners who oversees the mental health center's clinical services and who has:

(a) at least a three-year residency in psychiatry; or

(b) at least three years' post-graduate psychiatric training in a program approved by the counsel on medical evaluation of the American medical association; or

(c) at least three years of experience in a medical practice dedicated substantially to serving persons with serious mental illnesses.

(20) "Mental health group home" means a community residential facility as defined in ARM 37.88.901.

(21) "Mental illness" means that condition of an individual in which there is either psychological, physiological, or biochemical imbalance which has caused impairment in functioning and/or behavior.

(22) "Outpatient therapy services" means the provision of psychotherapy and related services by a licensed mental health professional acting within the scope of the professional's license or these same services provided by an in-training practitioner in a mental health center.

(23) "Program supervisor" means a designated licensed mental health professional having daily overall responsibility for the operation of a mental health center area of endorsement.

(24) "Program therapist" means a licensed mental health professional with the training and knowledge to provide psychotherapy.

(25) "Representative payee" means a payee appointed by the social security administration when a beneficiary is unable to manage their social security benefits, supplementary security income or medicare benefits.

(26) "Seclusion" means staff initiating or escorting a child or adolescent to a seclusion time-out room to calm down and appropriately manage their behavior.

(27) "Severe disabling mental illness" means, with respect to a person who is 18 or more years of age, that the person meets the requirements defined in ARM 37.86.3502.

(28) "Serious emotional disturbance" means, with respect to a youth, that the youth meets the requirements defined in ARM 37.86.3702.

(29) "Site based" means a specific location where the treatment services are consistently provided.

(30) "Time-out" means staff, child or adolescent initiating a time-out generally away from the group activity to enable the child or adolescent to calm down and appropriately manage their behavior. (History: 50-5-103, MCA; IMP, 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS & AMD, 2002 MAR p. 916, Eff. 3/29/02; AMD, 2005 MAR p. 2260, Eff. 9/23/05.)

Rules 03 through 05 reserved

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37.106.1906 MENTAL HEALTH CENTER: SERVICES AND LICENSURE

(1) Each applicant for licensure shall submit a license application to the department requesting approval to provide the services in (3) and may request approval to provide one or more of the services in (4).

(2) Services provided by a mental health center must be rendered by a single administration in a discrete physical facility or multiple facilities or by written agreement or contract with licensed health care professionals, licensed mental health professionals or other facilities such as hospital, clinics, or educational institutions which may combine to provide services.

(3) For a mental health center to be licensed, it must provide to its clients all of the following services:

- (a) crisis telephone services;
- (b) medication management services;
- (c) outpatient therapy services;
- (d) community-based psychiatric rehabilitation and support; and
- (e) chemical dependency services.

(4) A mental health center, with the appropriate license endorsement, may provide one or more of the following services:

- (a) child and adolescent intensive case management;
- (b) adult intensive case management;
- (c) child and adolescent day treatment;
- (d) adult day treatment;
- (e) adult foster care;
- (f) mental health group home;
- (g) a crisis stabilization program; or
- (h) a comprehensive school and community treatment program.

(5) Each service listed in (4) that is endorsed by the department shall be recorded on the mental health center's license.

(6) A mental health center may not condition a client's access to one of its services upon the client's receipt of another service provided by the mental health center unless continuity and quality of care require that services be provided by the same agency.

(7) Mental health center services must be available to recipients continuously throughout the year.

(8) A mental health center must report to the department, in writing, any of the following changes within at least 30 days before the planned effective date of the change:

- (a) a change of administrator;
- (b) a change of medical director;
- (c) any change in administrative location or service location;
- (d) a change in the name of the agency; or
- (e) the discontinuation of providing a service for which the mental health center has an area of endorsement. (History: 50-5-103, MCA; IMP, 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS & AMD, 2002 MAR p. 916, Eff. 3/29/02; AMD, 2005 MAR p. 1787, Eff. 9/23/05.)

37.106.1907 MENTAL HEALTH CENTER: ORGANIZATIONAL STRUCTURE

(1) Each mental health center shall employ or contract with an administrator who shall:

(a) maintain daily overall responsibility for the mental health center's operations;

(b) develop and oversee the implementation of policies and procedures pertaining to the operation and services of the mental health center;

(c) establish written orientation and training procedures for all employees including new employees, relief workers, temporary employees, students, interns, volunteers, and trainees. The training must include orientation on all the mental health center's policies and procedures;

(d) establish written policies and procedures:

(i) defining the responsibilities, limitations, and supervision of students, interns, and volunteers working for the mental health center;

(ii) for verifying each professional staff member's credentials, when hired, and thereafter, to ensure the continued validity of required licenses; and

(iii) for client complaints and grievances, to include an opportunity for appeal, and to inform clients of the availability of advocacy organizations to assist them.

(e) develop an organizational chart that accurately reflects the current lines of administration and authority; and

(f) maintain a file for all client incident reports.

(2) Each mental health center shall employ or contract with a medical director who shall:

(a) coordinate with and advise the staff of the mental health center on clinical matters;

(b) provide direction, consultation, and training regarding the mental health center's programs and operations as needed;

(c) act as a liaison for the mental health center with community physicians, hospital staff, and other professionals and agencies with regard to psychiatric services; and

(d) ensure the quality of treatment and related services through participation in the mental health center's quality assurance process. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS & AMD, 2002 MAR p. 916, Eff. 3/29/02.)

37.106.1908 MENTAL HEALTH CENTER: POLICIES AND PROCEDURES

(1) Each mental health center shall maintain a policy and procedure manual. The manual must be reviewed and approved, at least annually, by the medical director and administrator. The manual must contain policies and procedures for:

(a) notifying staff of all changes in policies and procedures;

(b) addressing client rights, including a procedure for informing clients of their rights;

(c) addressing and reviewing ethical issues faced by staff and reporting allegations of ethics violations to the applicable professional licensing authority;

(d) informing clients of the policy and procedures for client complaints and grievances;

(e) initiating services to clients;

(f) informing clients of rules governing their conduct and the types of infractions that can result in suspension or discontinuation of services offered by the mental health center;

(g) suspending or discontinuing program services with the following information to be provided to the client:

(i) the reason for suspending or discontinuing services or access to programs;

(ii) the conditions that must be met to resume services or access to programs;

(iii) the grievance procedure that may be used to appeal the suspension or discontinuation; and

(iv) what services, if any, will be continued to be provided even though participation in a particular service or program may be suspended or discontinued.

(h) referring clients to other providers or services that the mental health center does not provide; and

(i) conducting quality assessment and improvement activities.

(2) If the mental health center provides representative payee services, the center must comply with the accounting and reporting procedures established by the commissioner of social security as identified in section 1631 (a)(2) of the Social Security Act and must further ensure that clients are involved in budgeting their money and that budget sheets be used which require client signatures. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS & AMD, 2002 MAR p. 916, Eff. 3/29/02.)

37.106.1909 MENTAL HEALTH CENTER: CLINICAL RECORDS

(1) Each mental health center shall:

(a) collect assessment data and maintain clinical records on all clients who receive services and ensure the confidentiality of clinical records in accordance with the Uniform Health Care Information Act, Title 50, chapter 16, part 5, MCA. At a minimum, the clinical record must include:

(i) a clinical intake assessment;

(ii) additional assessments or evaluations, if clinically indicated;

(iii) a copy of the client's individualized treatment plan and all modifications to the treatment plan;

(iv) progress notes which indicate whether or not the stated treatment plan has been implemented, and the degree to which the client is progressing, or failing to progress, toward stated treatment objectives;

(v) medication orders from the prescribing physician and documentation of the administration of all medications;

(vi) signed orders by a licensed mental health professional for any restrictions of rights and privileges accorded clients of the mental health center including the reason(s) for the restriction; and

(vii) a discharge summary when the client's file is closed. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS & AMD, 2002 MAR p. 916, Eff. 3/29/02.)

Rules 10 through 14 reserved

37.106.1915 MENTAL HEALTH CENTER: CLIENT ASSESSMENTS

(1) Each mental health center shall complete a clinical intake assessment within 12 hours after admission for crisis stabilization program services and within three contacts, or 14 days from the first contact, whichever is later, for other services. Intake assessments must be conducted by a licensed mental health professional trained in clinical assessments and must include the following information in a narrative form to substantiate the client's diagnosis and provide sufficient detail to individualize treatment plan goals and objectives:

- (a) presenting problem and history of problem;
- (b) mental status;
- (c) diagnostic impressions;
- (d) initial treatment plan goals;
- (e) risk factors to include suicidal or homicidal ideation;
- (f) psychiatric history;
- (g) substance use/abuse and history;
- (h) current medication and medical history;
- (i) financial resources and residential arrangements;
- (j) education and/or work history; and
- (k) legal history relevant to history of illness, including guardianships, civil commitments, criminal mental health commitments, and prior criminal background.

(2) Based on the client's clinical needs, each mental health center shall conduct additional assessments which may include, but are not limited to, physical, psychological, emotional, behavioral, psychosocial, recreational, vocational, psychiatric, and chemical dependency evaluations.

(3) Each mental health center shall maintain a current list of providers who accept referrals for assessments and services not provided by the center. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS & AMD, 2002 MAR p. 916, Eff. 3/29/02.)

37.106.1916 MENTAL HEALTH CENTER: INDIVIDUALIZED
TREATMENT PLANS

(1) Based upon the findings of the assessment(s), each mental health center shall establish an individualized treatment plan for each client within 24 hours after admission for crisis stabilization program services and within five contacts, or 21 days from the first contact, whichever is later, for other services. The treatment plan must:

(a) identify treatment team members, from within and outside of the mental health center, who are involved in the client's treatment or care;

(b) specifically state measurable treatment plan objectives that serve the client in the least restrictive and most culturally appropriate therapeutic environment;

(c) describe the service or intervention with sufficient specificity to demonstrate the relationship between the service or intervention and the stated objective;

(d) identify the staff person and program responsible for each treatment service to be provided;

(e) include the client's or parent/guardian's signature indicating participation in the development of the treatment plan. If the client's or parent/guardian's participation is not possible or inappropriate, written documentation must indicate the reason;

(f) include the signature and date of the mental health center's licensed mental health professional and of the person(s) with primary responsibility for implementation of the plan indicating development and ongoing review of the plan. If intensive care management is the only service being received from the mental health center, a program supervisor must sign the treatment plan indicating the supervisor's review and approval for appropriateness; and

(g) state the criteria for discharge, including the client's level of functioning which will indicate when a particular service is no longer required.

(2) The treatment plan must be reviewed at least every 90 days for each client and whenever there is a significant change in the client's condition. A change in level of care or referrals for additional mental health services must be included in the treatment plan.

(3) The treatment plan review must be conducted by at least one licensed mental health professional from the mental health center, and include persons with primary responsibility for implementation of the plan. Other staff members must be involved in the review process as clinically indicated. Outside service providers must be contacted and encouraged to participate in the treatment plan review, as clinically indicated.

(4) If a client is receiving case management and/or medication management services along with one or more other services from the mental health center, the treatment plan review must be conducted by at least one licensed mental health professional from the mental health center and include persons with primary responsibility for implementing the treatment plan. Other staff members must be involved in the review process as clinically indicated. Outside service providers must be contacted and encouraged to participate in the treatment plan review, as clinically indicated.

(5) A treatment team meeting for establishing an individual treatment plan and for treatment plan review must be conducted face-to-face and include:

- (a) the client as clinically appropriate;
- (b) the client's guardian if applicable;
- (c) the client's parents or guardian if the client is a youth and the involvement by the parent or guardian is clinically appropriate;
- (d) case manager, if the client has one; and
- (e) in the case of an adult client, an adult friend or family member may be invited to participate in the treatment planning or treatment plan review meeting, at the request of and upon written consent of the client, and as deemed clinically appropriate by the client's treatment team, prior to the scheduling of the meeting.

(6) The treatment plan review must be comprehensive with regard to the client's response to treatment and result in either an amended treatment plan or a statement of the continued appropriateness of the existing plan. The results of the treatment plan review must be entered into the client's clinical record. The documentation must include a description of the client's functioning and justification for each client goal.

(7) If the mental health center develops separate treatment plans for each service, the treatment plans must be integrated with one another and a copy of each treatment plan must be kept in the client's record. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS & AMD, 2002 MAR p. 916, Eff. 3/29/02.)

37.106.1917 MENTAL HEALTH CENTER: CLIENT DISCHARGE

(1) Each mental health center shall prepare a discharge summary for each client no longer receiving services. The discharge summary must include:

(a) the reason for discharge;

(b) a summary of the services provided by the mental health center including recommendations for aftercare services and referrals to other services, if applicable;

(c) an evaluation of the client's progress as measured by the treatment plan and the impact of the services provided by the mental health center; and

(d) the signature of the staff member who prepared the report and the date of preparation.

(2) Discharge summaries reports must be filed in the clinical record within one month of the date of the client's formal discharge from services or within three months of the date of the client's last service when no formal discharge occurs.

(3) For cases left open when a client has not received services for over 30 days, documentation must be entered into the record indicating the reason for leaving the case open.

(History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS & AMD, 2002 MAR p. 916, Eff. 3/29/02.)

37.106.1918 MENTAL HEALTH CENTER: PERSONNEL RECORDS

(1) For each employee or contracted individual, the mental health center shall maintain the following information on file:

(a) a current job description;

(b) if a licensed mental health professional, documentation of current licensure and certification; and

(c) dated documentation of the individual's involvement in orientation, training, and continuing education activities.

(History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS, from DHES, 2002 MAR p. 916.)

37.106.1919 MENTAL HEALTH CENTER: QUALITY ASSESSMENT

(1) Each mental health center shall implement and maintain an active quality assessment program using information collected to make improvements in the mental health center's policies, procedures and services. At a minimum, the program must include procedures for:

(a) conducting client satisfaction surveys, at least annually, for all mental health center programs. The survey must address:

(i) whether the client, parent or guardian is adequately involved in the development and review of the client's treatment plan;

(ii) whether the client, parent or guardian was informed of client rights and the mental health center's grievance procedure;

(iii) the client's, parent's or guardian's satisfaction with all mental health center programs in which the client participated; and

(iv) the client's, parent's, or guardian's recommendations for improving mental health center's services.

(b) maintaining records on the occurrence, duration and frequency of seclusion and physical restraints used;

(c) reviewing, on an ongoing basis, incident reports, grievances, complaints, medication errors, and the use of seclusion and/or physical restraint with special attention given to identifying patterns and making necessary changes in how services are provided; and

(d) a quarterly review with the appropriate school district of the effectiveness, financial status, staffing patterns, and staff caseload of any CSCT program provided pursuant to an endorsement under ARM 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961 and 37.106.1965.

(2) Each mental health center shall prepare and maintain on file an annual report of improvements made as a result of the quality assessment program. (History: 50-5-103, MCA; IMP, 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS & AMD, 2002 MAR p. 916, Eff. 3/29/02; AMD, 2005 MAR p. 1787, Eff. 9/23/05.)

Rules 20 through 24 reserved

37.106.1925 MENTAL HEALTH CENTER: COMPLIANCE WITH BUILDING AND FIRE CODES, FIRE EXTINGUISHERS, SMOKE DETECTORS AND MAINTENANCE

(1) Each mental health center shall ensure that its facilities, buildings, and homes:

(a) meet all applicable state and local building and fire codes;

(b) have a workable portable fire extinguisher on each floor, with a minimum rating of 2A10BC. Extinguishers must be readily accessible at all times; and

(c) have a properly maintained and regularly tested smoke detector, approved by a recognized testing laboratory, on each floor. Building exits must be unobstructed and clearly marked.

(2) Each mental health center shall ensure its facilities, buildings, homes, equipment, and grounds are clean and maintained in good repair at all times for the safety and well being of its clients, staff, and visitors. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS, from DHES, 2002 MAR p. 916.)

37.106.1926 MENTAL HEALTH CENTER: PHYSICAL ENVIRONMENT

(1) Each mental health center providing a mental health group home or a crisis intervention stabilization facility must ensure that no more than four residents reside in a single bedroom. Each multi-bedroom must contain at least 80 square feet per bed, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules. Each center must further provide:

- (a) one toilet for every four residents;
- (b) a toilet and sink in each toilet room;
- (c) one bathing facility for every 12 residents; and
- (d) showers and tubs with non-slip surfaces.

(2) Any provision of this rule may be waived at the discretion of the department if conditions in existence prior to the adoption of this rule or construction factors would make compliance extremely difficult or impossible and if the department determines that the level of safety to residents and staff is not diminished. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS, from DHES, 2002 MAR p. 916.)

37.106.1927 MENTAL HEALTH CENTER: EMERGENCY PROCEDURES

(1) Each mental health center shall develop a written plan for emergency procedures. At a minimum, the plan must include:

(a) emergency evacuation procedures to be followed in the case of fire or other emergency;

(b) procedures for contacting emergency service responders; and

(c) the names and phone numbers for contacting other mental health center staff in emergency situations.

(2) Telephone numbers of the hospital, police department, fire department, ambulance, and poison control center must be posted by each telephone. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS, from DHES, 2002 MAR p. 916.)

Rules 28 through 34 reserved

37.106.1935 MENTAL HEALTH CENTER: CHILD AND ADOLESCENT AND ADULT INTENSIVE CASE MANAGEMENT (1) In addition to the requirements established in this subchapter, each mental health center providing child and adolescent and adult intensive case management services shall comply with the requirements established in this rule.

(2) Each mental health center providing intensive case management program services shall:

(a) employ or contract with a program supervisor, experienced in providing services to individuals with a mental illness. The program supervisor shall meet with each intensive case manager, either individually or in a group meeting, at least every 30 days. Individual supervision of case managers must be offered by the mental health center as needed and may be initiated by either the case manager or the supervisor;

(b) employ or contract with case managers who have the knowledge and skills needed to effectively perform case management duties. Minimum qualifications for a case manager are a bachelor's degree in a human services field with at least one year of full time experience serving people with mental illnesses. Individuals with other educational backgrounds who, as providers, consumers, or advocates of mental health services have developed the necessary skills, may also be employed as intensive case managers. The mental health center's case management position description must contain equivalency provisions;

(c) train the program supervisor and program staff in the therapeutic de-escalation of crisis situations to ensure the protection and safety of the clients and staff. The training must include the use of physical and non-physical methods of managing clients and must be updated, at least annually, to ensure the maintenance of necessary skills;

(d) maintain progress notes for each client. The progress notes must be entered into the client's clinical record at least every 30 days and upon the occurrence of any significant change in the client's condition;

(e) develop written policies and procedures addressing the independence of the intensive case manager and intensive case management program. At a minimum, the policies and procedures must address:

(i) the intensive case manager acting as a client's advocate in involuntary commitment proceedings;

(ii) the intensive case manager's role in conflicts between the client and the mental health center or other agencies;

(iii) the ability of the intensive case manager to freely advocate for services from or outside of the mental health center on behalf of the client;

(iv) the relationship between the primary therapist, if the client has one, and the case manager;

(v) the obligation to report information to the mental health center staff that the client has requested to be kept confidential; and

(vi) the ability of the intensive case manager to contact an advocacy organization if the case manager believes the mental health center is unresponsive to the needs of the client.

(3) The availability of intensive case management services may not be made contingent upon a client's willingness to receive other services. A client suspended or excluded from other programs or services provided by the mental health center may not be restricted or suspended from intensive case management services solely due to the action involving the other program or services.

(4) Intensive case management services are largely provided throughout the community rather than in an office or a facility. All contacts with clients must occur in a place that is convenient for the client. More than 50% of a case manager's in person contacts with clients must be outside of the mental health center's facility. Restrictions may not be placed on a case manager's ability to meet with a client in any reasonable location. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS & AMD, 2002 MAR p. 916, Eff. 3/29/02.)

37.106.1936 MENTAL HEALTH CENTER: CHILD AND ADOLESCENT DAY TREATMENT (1) In addition to the requirements established in this subchapter, each mental health center providing a child and adolescent day treatment program shall comply with the requirements established in this rule.

(2) The child and adolescent day treatment program must be site based and occur in a location separate from the child and adolescent's regular classroom. Appropriate, supplemental day treatment services may be delivered off site. The program shall:

(a) operate at least five days per week for at least three hours per day, unless school holidays preclude day treatment activities. Preschool day treatment programs shall operate at least three days a week, three hours a day, unless school holidays preclude day treatment activities;

(b) employ or contract with a program supervisor who is knowledgeable about the service and support needs of children and adolescents with serious emotional disturbances. The program therapist or program supervisor must be site based;

(c) establish admission criteria which assess the child or adolescent's needs and the appropriateness of the services to meet those needs. Students still in school, 18 years of age or older, remain eligible for the program;

(d) provide mental health services according to the individualized treatment plan which may include individual therapy, family and group therapy, social skills training, life skills training, pre-vocational training, therapeutic recreation services and ensure access to emergency services;

(e) coordinate its services with educational services provided through full collaboration with a school district recognized by the office of public instruction;

(f) provide referral and aftercare coordination with inpatient facilities, residential treatment programs, or other appropriate out-of-home placement programs;

(g) establish policies and procedures regarding the use of time-out and seclusion. Time-out and seclusion may not be used with a locked door. Mechanical restraints may not be used. If time-out is used, intermittent to continuous staff observation is required, as clinically indicated. If seclusion is used, continuous staff observation is required. Written permission from the parent or legal guardian must be obtained for the use of non-aversive and aversive interventions and must be placed in the client's clinical record. The clinical record must include signed orders by a licensed mental health professional for use of seclusion, a detailed description of the circumstances warranting such action, and the date, time and duration of the seclusion;

(h) require and ensure that the program supervisor and all staff shall each have a minimum of six contact hours of annual training relating to child and adolescent mental illnesses and treatment; and

(i) maintain progress notes for each client. The progress notes must be entered into the client's clinical record at least every 30 days and upon the occurrence of any significant change in the client's condition.

(3) The day treatment staff shall attend all child study team (CST) meetings and individual education planning meetings when clinically indicated and permission has been granted by the parent or legal guardian or child, when age appropriate. If the client requires an individualized education program (IEP), a copy of the IEP must be included in the client's treatment plan unless the parent or legal guardian or child, when age appropriate, refuses to authorize release to the mental health center.

(4) The program supervisor and day treatment program staff must be trained in the therapeutic de-escalation of crisis situations to ensure the protection and safety of the clients and staff. The training must include the use of physical and non-physical methods of managing children and adolescents and must be updated, at least annually, to ensure that necessary skills are maintained.

(5) Each program therapist or in-training practitioner therapist in the program shall carry an active caseload not to exceed 12 day treatment clients. The therapist who carries the caseload must also provide the therapy and must be on site during the entire day treatment hours of operation unless the therapist is attending a meeting offsite that pertains to one of the day treatment client's treatment. The program supervisor may carry a caseload of up to six day treatment clients.

(6) There must be at least one full-time equivalent (FTE) clinical or mental health staff member for every six clients in the program. Support staff means an adult, under the supervision of the program supervisor or therapist, with experience in working with children and adolescents with severe emotional disturbances. For the purpose of this ratio, the number of participants in the program must be based on the average daily attendance. This ratio includes the site based therapist or program supervisor, if the therapist or supervisor spends at least half of the time with the class and is readily available at other times when the need arises. The program therapist's office must be in close proximity to the day treatment classroom to provide timely interventions to clients. Mental health staff must not be shared with other programs. Either the mental health support staff member, the therapist or the supervisor must be in the classroom at all times during operation of the program. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS & AMD, 2002 MAR p. 916, Eff. 3/29/02.)

37.106.1937 MENTAL HEALTH CENTER: ADULT DAY TREATMENT

(1) In addition to the requirements established in this subchapter, each mental health center providing adult day treatment shall comply with the requirements established in this rule.

(2) The adult day treatment program shall:

(a) operate at least two days a week, for at least four hours a day;

(b) employ or contract with a program supervisor who is knowledgeable about the service and support needs of individuals with a mental illness, day treatment programming and psychosocial rehabilitation. The program supervisor or program therapist must be site based;

(c) provide, by means of a variety of individual and group treatment modalities, therapy and rehabilitation in the areas of independent living skills, crisis intervention, pre-vocational and vocational skill building, socialization, and recreational activities;

(d) structure its treatment activities to promote increasing levels of independence in the client's functioning;

(e) require the program supervisor and all program staff to each have a minimum of six contact hours of annual training relating to adult mental illness and treatment;

(f) maintain progress notes for each client. The progress notes must be entered into the client's clinical record at least every 30 days and upon the occurrence of any significant change in the client's condition; and

(g) maintain a client to staff ratio that may not exceed 10 clients to one staff member.

(3) The program supervisor and day treatment program staff must be trained in the therapeutic de-escalation of crisis situations to ensure the protection and safety of the clients and staff. The training must include the use of physical and non-physical methods of managing clients, and must be updated, at least annually, to ensure that necessary skills are maintained. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS & AMD, 2002 MAR p. 916, Eff. 3/29/02.)

37.106.1938 MENTAL HEALTH CENTER: MENTAL HEALTH GROUP HOME (1) In addition to the requirements established in this subchapter, each mental health center providing a mental health group home shall comply with the requirements established in this rule.

(2) The purpose of a mental health group home is to provide residential treatment for adults with a mental illness.

(3) The mental health group home is considered to be a community residential facility for the purposes of local zoning and building codes reviews.

(4) The mental health group home must be annually inspected for compliance with fire codes by the state fire marshal or the marshal's designee. The home shall maintain a record of such inspection for at least one year following the date of the inspection.

(5) The mental health group home shall:

(a) employ or contract with a program supervisor who is knowledgeable about the service and support needs of individuals with mental illnesses;

(b) maintain staffing at least eight hours daily. Additional staff hours and supervision shall be dictated by the needs of the group home residents;

(c) ensure that 24 hour a day emergency mental health care is available through the mental health center or other contracted entities;

(d) structure its treatment activities to promote increasing levels of independence in the client's functioning;

(e) establish admission criteria which assess the individual's needs and the appropriateness of the services to meet those needs. At a minimum, admission criteria must require that the person:

(i) be 18 years of age or older and be unable to maintain the stability of their mental illness in an independent living situation;

(ii) be diagnosed with a mental illness;

(iii) be medically stable;

(iv) not be an immediate danger to self or others;

(v) requires a transitional residential level of care from a short acute hospital stay or long-term commitment, or requires some ongoing residential structure or supervision;

(vi) sign a contract to follow group home rules.

(f) assess new admissions to the mental health group home and offer ongoing treatment and training in the following areas:

(i) community adjustment (ability to use community resources such as stores, professional services, recreational facilities, government agencies, etc.);

(ii) personal care (grooming, food preparation, housekeeping, money management, etc.);

(iii) socialization; and

(iv) recreation/leisure.

(g) maintain progress notes for each client. The progress notes must be entered into the client's clinical record at least every 30 days and upon the occurrence of any significant change in the client's condition.

(6) Staff working in the mental health group home must:

(a) be 18 years of age;

(b) possess a high school diploma or GED;

(c) have received training in the treatment of adults with a mental illness;

(d) be capable of implementing each resident's treatment plan; and

(e) be trained in the Heimlich maneuver and maintain certification in cardiopulmonary resuscitation (CPR).

(7) The program supervisor shall orient new staff on how to deal with client rule violations, new admissions, emergency situations, after hour admissions and client incident reports. Written policies and procedures for handling day-to-day operations must be available at the group home.

(8) The program supervisor and all program staff must each have a minimum of six contact hours of annual training relating to adult mental illness and treatment.

(9) The program supervisor and group home program staff must be trained in the therapeutic de-escalation of crisis situations to ensure the protection and safety of the residents and staff. The training must include the use of physical and non-physical methods of managing residents, and must be updated, at least annually, to ensure that necessary skills are maintained.

- (10) Upon admission, each resident must be provided with:
- (a) a written statement of resident rights which, at a minimum, include the applicable patient rights in 53-21-142, MCA;
 - (b) a copy of the mental health center grievance procedure; and
 - (c) the written rules of conduct including the consequences for violating the rules.
- (11) At the time of a resident's discharge from the group home, the staff shall assist the resident in making arrangements for housing, employment, education, training, treatment, and/or other services needed for adequate adjustment to community living. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS & AMD, 2002 MAR p. 916, Eff. 3/29/02.)

Rules 39 through 44 reserved

37.106.1945 MENTAL HEALTH CENTER: CRISIS TELEPHONE SERVICES

(1) In addition to the requirements established in this subchapter, each mental health center shall provide crisis telephone services and comply with the following requirements:

(a) ensure that crisis telephone services are available 24 hours a day, seven days a week. Answering services and receptionists may be used to transfer calls to individuals who have been trained to respond to crisis calls;

(b) employ or contract with appropriately trained individuals, under the supervision of a licensed mental health professional, to respond to crisis calls. An appropriately trained individual is one who has received training and instruction regarding:

(i) the policies and procedures of the mental health center for crisis intervention services;

(ii) crisis intervention techniques;

(iii) conducting assessments of risk of harm to self or others, and prevention approaches;

(iv) the process for voluntary and involuntary hospitalization;

(v) the signs and symptoms of mental illness; and

(vi) the appropriate utilization of community resources.

(c) ensure that a licensed mental health professional provides consultation and backup, as indicated, for unlicensed individuals responding to crisis calls;

(d) establish written policies and procedures governing in-person contacts between crisis responders and crisis callers. The policies and procedures must address the circumstances under which the contacts may or may not occur and safety issues associated with in-person contacts;

(e) maintain documentation for each crisis call. The documentation must reflect:

(i) the date of the call;

(ii) the staff involved;

(iii) identifying data, if possible;

(iv) the nature of the emergency, including an assessment of dangerousness/lethality, medical concerns, and social supports; and

(v) the result of the intervention.

(2) No individual may respond to crisis calls until the mental health center documents in writing in the individual's personnel file that the individual has received the training and instruction required in (1)(b) above. Additional training and instruction must be provided to crisis responders based upon an ongoing assessment of presenting problems and responder needs and to ensure that necessary crisis intervention skills are maintained. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS & AMD, 2002 MAR p. 916, Eff. 3/29/02.)

37.106.1946 MENTAL HEALTH CENTER: CRISIS STABILIZATION PROGRAM (1) In addition to the requirements established in this subchapter each mental health center providing a crisis stabilization program shall comply with the requirements established in this rule.

(2) The facility must be annually inspected for compliance with fire codes by the state fire marshal or the marshal's designee. The facility shall maintain a record of such inspection for at least one year following the date of the inspection.

(3) The crisis stabilization program shall:

(a) employ or contract with a program supervisor knowledgeable about the service and support needs of individuals with mental illness experiencing a crisis. The program supervisor or a licensed mental health professional must be site based;

(b) require staff working in the crisis stabilization program:

(i) be 18 years of age;

(ii) possess a high school diploma or GED; and

(iii) be capable of implementing each resident's treatment plan.

(c) ensure that the program supervisor and all staff each have a minimum of six contact hours of annual training relating to the service and support needs of individuals with mental illness experiencing a crisis;

(d) orient staff prior to assuming the duties of the position on:

(i) the types of mental illness and treatment approaches;

(ii) suicide risk assessment and prevention procedures;

and

(iii) program policies and procedures, including emergency procedures;

(e) orient staff within eight weeks from assuming the duties of the position on:

(i) therapeutic communications;

(ii) the legal responsibilities of mental health service providers;

(iii) mental health laws of Montana regarding the right of consumers;

(iv) other services provided by the mental health center; and

(v) infection control and prevention of transmission of blood borne pathogens.

(f) maintain written program policies and procedures at the facility;

- (g) train staff in the Heimlich maneuver and ensure staff maintain current certification in cardiopulmonary resuscitation (CPR);
- (h) maintain 24 hour awake staff;
- (i) maintain a staff-to-patient ratio dictated by resident need. A procedure must be established to increase or decrease staff coverage as indicated by resident need;
- (j) establish admission criteria which assess the individual's needs and the appropriateness of the services to meet those needs. At a minimum, admission criteria must require that the person:
 - (i) be at least 18 years of age;
 - (ii) be medically stable (with the exception of the person's mental illness);
 - (iii) be drug and alcohol free to the extent it does not significantly impair the individual's ability to meet the other admission criteria;
 - (iv) be willing to enter the program, follow program rules, and accept recommended treatment;
 - (v) be willing to sign a no-harm contract, if clinically indicated;
 - (vi) not require physical or mechanical restraint;
 - (vii) be in need of frequent observation on a 24 hour basis;
- (k) establish written policies and procedures:
 - (i) for completing a medical screening and establishing medical stabilization, prior to admission;
 - (ii) to be followed should residents, considered to be at risk for harming themselves or others, attempt to leave the facility without discharge authorization from the licensed mental health professional responsible for their treatment; and
 - (iii) for the secure storage of toxic household chemicals and sharp household items such as utensils and tools.
- (l) when clinically appropriate, provide each resident upon admission, or as soon as possible thereafter:
 - (i) a written statement of resident rights which, at a minimum, include the applicable patient rights in 53-21-142, MCA;
 - (ii) a copy of the mental health center grievance procedure; and
 - (iii) the written rules of conduct including the consequences for violating the rules.

(m) ensure inpatient psychiatric hospital care is available through a transfer agreement for residents in need of hospitalization;

(n) maintain progress notes for each resident. The progress notes must be entered at least daily into the resident's clinical record. The progress notes must describe the resident's physical condition, mental status, and involvement in treatment services; and

(o) make referrals for services that would help prevent or diminish future crises at the time of the resident's discharge. Referrals may be made for the resident to receive additional treatment or training or assistance such as securing housing.

(4) The program supervisor and program staff must be trained in the therapeutic de-escalation of crisis situations to ensure the protection and safety of the residents and staff. The training must include the use of physical and non-physical methods of managing residents and must be updated, at least annually, to ensure that necessary skills are maintained. (History: 50-5-103, MCA; IMP, 50-5-103 and 50-5-204, MCA; NEW, 1998 MAR p. 539, Eff. 2/27/98; TRANS & AMD, 2002 MAR p. 916, Eff. 3/29/02.)

Rules 47 through 49 reserved

37.106.1950 MENTAL HEALTH CENTER: MEDICATION MANAGEMENT SERVICES (1) Each mental health center shall make medication management services available to the clients it serves for medications needed to treat their mental illnesses.

(2) Medication management services shall be provided by licensed health care professionals, acting within the scope of their licenses, who are either employed by or contracted with the mental health center.

(3) A mental health center shall have medication management policies and procedures in its policy procedure manual which include, at minimum, the following:

(a) maintaining a current, chronological and dated record of medication orders by the client's licensed health care professional in the client's clinical records;

(b) self-administration of medications by clients;

(c) administering client prescription and over-the-counter medications by licensed health care professionals;

(d) adjusting dosages or prescribing new medications for clients to include the rationale for the use of and changes in the client's medication;

(e) monitoring the client's response to medication or dosage changes;

(f) maintaining a medication administration record for each client documenting medications and dosages prescribed, the client's compliance in taking prescribed medications, doses taken or not taken, any measure taken to obtain compliance, and the reason for omission of any scheduled dose of medication;

(g) documenting any medication errors;

(h) reporting and addressing in a timely manner, any medication errors and adverse drug reactions to the licensed health care professional who prescribed the client's medication, and to the program supervisor and medical director;

(i) providing and documenting education about the effects, side effects, contraindications and management procedures of the client's medication;

(j) providing safe and secure storage of all medications;

(k) providing refrigeration for medication segregated from food items, within the temperature range specified by the manufacturer for medication that requires refrigeration; and

(l) storing medication in the container dispensed by the pharmacy or in the container in which it was purchased in the case of over-the-counter medication, with the label intact and clearly legible. (History: 50-5-103, MCA; IMP, 50-5-103 and 50-5-204, MCA; NEW, 2002 MAR p. 916, Eff. 3/29/02.)

Rules 51 through 54 reserved

37.106.1955 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM (CSCT) (1) In addition to the requirements established in this subchapter, a licensed mental health center providing a comprehensive school and community treatment program (CSCT) must have a CSCT endorsement issued by the department. To receive a CSCT program endorsement, the licensed mental health center must establish to the department's satisfaction that it meets the requirements stated in these program rules.

(2) The licensed mental health center's CSCT program must have written admission and discharge criteria.

(3) The program must assess the needs of a child or adolescent with a serious emotional disturbance and the appropriateness of the CSCT program to meet those needs.

(4) Individuals enrolled in public school remain eligible for the CSCT program through the age of 20. (History: 53-2-201 and 53-6-113, MCA; IMP, 50-5-103, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA; NEW, 2005 MAR p. 1787, Eff. 12/1/05.)

37.106.1956 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM, SERVICES (1) The CSCT program must be able to provide the following services, as clinically indicated, to children or adolescents with serious emotional disturbance, as that term is defined at ARM 37.86.3702:

- (a) individual, group and family therapy;
- (b) behavioral intervention;
- (c) other evidence and research based practices effective in the treatment of children or adolescents with a serious emotional disturbance;
- (d) direct crisis intervention services during the time the child or adolescent is present in a school-owned or operated facility;
- (e) crisis intervention services by telephone during the time the child or adolescent is not present in a school-owned or operated facility;
- (f) treatment plan coordination with addictive and mental health treatment services the child or adolescent receives outside the CSCT program;
- (g) access to emergency services;
- (h) referral and aftercare coordination with inpatient facilities, residential treatment programs, or other appropriate out-of-home placement programs; and
- (i) continuous treatment that includes services during nonschool days, integrated in a manner consistent with the child or adolescent's treatment plan.

(2) CSCT services must be provided according to an individualized treatment plan designed by a licensed mental health professional who is a staff member of a CSCT program team.

(3) The licensed mental health center CSCT program supervisor and an appropriate school district representative must meet at least every 90 days during the time period CSCT services are provided to mutually assess program effectiveness utilizing, but not limited to, the following indicators:

- (a) child or adolescent progress on his or her individual treatment plan;
- (b) attendance;
- (c) discipline referrals;
- (d) contact with law enforcement; and/or
- (e) referral to a higher level of care. (History: 53-2-201 and 53-6-113, MCA; IMP, 50-5-103, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA; NEW, 2005 MAR p. 1787, Eff. 9/23/05.)

Rules 57 through 59 reserved

37.106.1960 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM, STAFFING AND TRAINING (1) The licensed mental health center's CSCT program must be provided through a program of services delivered by a team or teams.

(2) Each team must consist of a full-time equivalent licensed mental health professional, as that term is defined in 37.106.1902, and an aide. An in-training mental health practitioner pursuant to ARM 37.88.901 may be a team member. Full-time equivalent is defined in ARM 37.27.102.

(3) A full-time equivalent team is limited to the billing amounts as set forth in ARM 37.86.2225.

(4) A CSCT program must employ or contract with a program supervisor who is knowledgeable about the service and support needs of children and adolescents with serious emotional disturbances. The program supervisor may be a member of a team providing direct services.

(5) This rule is not intended to prevent the use of part-time staff to provide CSCT services throughout the year, including school vacation periods. If a child or adolescent receives CSCT services during time periods when school is not regularly in session, then part-time staff may be used and billed as set forth in ARM 37.86.2225.

(6) The licensed mental health center's CSCT program must be delivered by adequately trained staff. Training must be documented and maintained in the personnel files.

(7) If a nonlicensed team member is employed, that individual must have a high school diploma or a general education degree (GED) and one year of relevant experience.

(a) The nonlicensed team member must receive 10 hours of training during the first three months of employment that includes de-escalation training, child development, and how and when to implement behavior management. The 10 hours of initial training may be combined with the required 18 hours of annual training mandated for all team members.

(8) All team members are required to receive a minimum of 18 hours training per year in behavior management strategies that focus on the prevention of behavior problems for children or adolescents with serious emotional disturbance (SED). Training must include:

- (a) positive behavioral intervention planning and support;
- (b) classroom and child or adolescent management techniques that include nationally certified de-escalation training;
- (c) evidence and research based behavior interventions and practices;
- (d) therapeutic de-escalation of crisis situations for the protection and safety of the clients and staff; and
- (e) physical and nonphysical methods of managing children and adolescents. (History: 53-2-201 and 53-6-113, MCA; IMP, 50-5-103, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA; NEW, 2005 MAR p. 1787, Eff. 9/23/05.)

37.106.1961 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM, CLIENT RECORD REQUIREMENTS

(1) In addition to any clinical records required in ARM 37.85.414 or elsewhere in these rules, the licensed mental health center's CSCT program must maintain the following client records:

- (a) progress notes for each individual therapy and other direct services;
- (b) monthly overall progress notes; and
- (c) individual outcomes compared to baseline measures and established benchmarks. (History: 53-2-201 and 53-6-113, MCA; IMP, 50-5-103, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA; NEW, 2005 MAR p. 1787, Eff. 9/23/05.)

Rules 62 through 64 reserved

37.106.1965 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL
AND COMMUNITY TREATMENT PROGRAM, SPECIAL EDUCATION REQUIREMENTS

(1) The licensed mental health center's CSCT program must be coordinated with the child or adolescent's special education program, if any.

(2) If a client has a child study team (CST), as that term is used in Title 20, MCA, the CSCT team assigned to the child or adolescent must attend CST meetings and individualized education plan (IEP) meetings when clinically indicated and permitted under state and federal law.

(3) A copy of the IEP must be included in the child or adolescent's treatment plan. (History: 53-2-201 and 53-6-113, MCA; IMP, 50-5-103, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA; NEW, 2005 MAR p. 1787, Eff. 9/23/05.)

Subchapter 20

Mental Health Center: Foster Care for
Adults With Mental Illnesses

37.106.2001 MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES (1) In addition to the requirements established in this subchapter, each mental health center providing foster care for mentally ill adults shall utilize only foster care providers licensed by the department pursuant to ARM Title 37, chapter 100, subchapter 1. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 2002 MAR p. 1092, Eff. 3/29/02.)

Rules 02 and 03 reserved

37.106.2004 MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, POLICY AND PROCEDURES (1) Each mental health center that has a foster care program endorsement shall have policy and procedures in place to make initial and periodic assessment of the foster care provider's ability to meet the following criteria:

(a) ability to provide necessary services and supports to the client; and

(b) ability to support the client's rights as outlined in 53-21-142, MCA.

(2) The mental health center shall provide an orientation session prior to the mental health center entering into a client placement agreement with the foster care provider, and at least annually on issues that at minimum address the following:

(a) the types of mental illnesses, etiology of mental illnesses, treatment approaches and recovery from mental illnesses;

(b) community resources and available mental health center services;

(c) therapeutic communications;

(d) program policies and procedures, including emergency procedures;

(e) legal responsibilities of mental health service providers and client rights;

(f) infection control and prevention of transmission of blood borne pathogens; and

(g) cardiopulmonary resuscitation (CPR) and Heimlich maneuver. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 2002 MAR p. 1092, Eff. 3/29/02.)

37.106.2005 MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, RECORDS (1) For each foster care provider, the mental health center shall maintain the following information on file:

(a) initial and annual assessments of the provider's ability to provide necessary services and supports to the client and ability to support the client's rights as outlined in 53-21-142, MCA; and

(b) documentation of the orientation session prior to entering into a client placement agreement, and annually thereafter.

(2) For each client, the mental health center shall maintain the following information on file:

(a) the mental health center's individual placement agreement with each client which sets forth the terms of the client's placement and the responsibilities of the foster care provider, the mental health center, the client, and when appropriate the guardian as defined in ARM 37.106.1902; and

(b) documentation that the client has received an assessment to ensure the appropriateness of foster care services in meeting the client's needs as provided in ARM 37.106.2015.

(History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 2002 MAR p. 1092, Eff. 3/29/02.)

37.106.2006 MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, STAFF SUPERVISION AND TRAINING (1) A mental health center providing foster care shall employ a program supervisor who is experienced in providing services to individuals with mental illnesses. The program supervisor shall supervise all foster care specialists and ensure the program complies with the requirements of this subchapter. The program supervisor may perform the duties of an adult foster care specialist if the mental health center has not more than 10 adult foster care clients.

(2) A mental health center providing foster care shall train the program supervisor and adult foster care specialists in the therapeutic de-escalation of crisis situations. The training must include the use of physical and non-physical methods of managing clients and must be updated, at least annually.

(3) The mental health center shall provide periodic training to reinforce and update the initial training outlined in this rule. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 2002 MAR p. 1092, Eff. 3/29/02.)

Rules 07 through 10 reserved

37.106.2011 MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, ADULT FOSTER CARE SPECIALIST (1) A mental health center providing foster care shall employ or contract with at least one adult foster care specialist.

(2) The adult foster care specialist shall have the knowledge and skills needed to effectively perform foster care specialist duties. Minimum qualifications for a foster care specialist are a bachelor's degree in a human services field with one year of full time experience serving people with mental illnesses. Individuals with other educational backgrounds who, as providers, consumers or advocates of mental health services have developed the necessary skills, may also be employed as foster care specialists. The mental health center's foster care specialists position description may contain equivalency provisions.

(3) The adult foster care specialist shall:

(a) implement and coordinate mental health services to clients;

(b) carry a case load of not more than 16 foster care clients;

(c) meet with the foster care provider at least weekly in his or her home or whenever there is a significant change in the client's condition, to assess, at a minimum, the following:

(i) the provider's ability to continue to meet the needs of the client as determined by the treatment plan; and

(ii) whether supports for the foster care provider are adequate; and

(d) document bi-weekly summaries or sooner if there is a significant change in the client's condition regarding the client's treatment in the client's clinical record.

(History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 2002 MAR p. 1092, Eff. 3/29/02.)

Rules 12 through 14 reserved

37.106.2015 MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, CLIENT ADMISSION CRITERIA AND NEEDS ASSESSMENT (1) A mental health center providing foster care shall establish admission criteria which assesses the client's needs and the appropriateness of foster care services to meet those needs. At a minimum, the admission criteria must require that a client:

- (a) be 18 years of age or older;
- (b) be unable to maintain the stability of their mental illness in an independent living situation;
- (c) be diagnosed with a severe disabling mental illness;
- (d) be medically stable;
- (e) not be an immediate danger to self or others; and
- (f) be able to take medications when prompted.

(2) A mental health center providing foster care shall assess the needs of each newly-admitted client in the following areas:

- (a) the client's ability to appropriately use community resources to access professional services, and to obtain services from public agencies;
- (b) the client's personal care skills;
- (c) the client's ability to socialize and participate in recreation and leisure activities; and
- (d) the likelihood the client will benefit from adult foster care. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 2002 MAR p. 1092, Eff. 3/29/02.)

37.106.2016 MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, TREATMENT PLAN (1) A mental health center providing foster care shall implement a treatment plan for each client that:

- (a) structures rehabilitation and treatment activities to promote increasing levels of independence;
- (b) articulates a detailed crisis plan; and
- (c) articulates arrangements for the client's discharge from the foster care home in the following areas:
 - (i) housing;
 - (ii) employment;
 - (iii) education and training;
 - (iv) treatment; and
 - (v) any other services needed for independent living.

(2) A mental health center providing foster care shall maintain progress notes for each client. The progress notes must be entered into the client's clinical record at least every 30 days, and upon the occurrence of any significant change in the client's condition. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 2002 MAR p. 1092, Eff. 3/29/02.)

37.106.2017 MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, CLIENT PLACEMENT AGREEMENTS (1) The mental health center shall enter into an individual placement agreement which sets forth the terms of the client's placement, the responsibilities of the foster care provider, the mental health center, the client, and when appropriate, the guardian.

(2) The placement agreement must be signed with copies dispersed to all parties who are a part of the agreement.

(3) The placement agreement shall be reviewed quarterly by all parties who are part of the agreement to determine the need for any amendments to the agreement. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 2002 MAR p. 1092, Eff. 3/29/02.)

37.106.2018 MENTAL HEALTH CENTER: FOSTER CARE FOR ADULTS WITH MENTAL ILLNESSES, CLIENT RIGHTS AND RESPONSIBILITIES

(1) Upon admission a mental health center providing foster care shall provide each client with:

(a) a written statement of the client's rights which, at a minimum, include the rights found in 53-21-142, MCA;

(b) a copy of the mental health center grievance procedure; and

(c) written rules of conduct for the foster care home and the consequences to the client for violating the rules. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-204, MCA; NEW, 2002 MAR p. 1092, Eff. 3/29/02.)

Subchapter 21

Intermediate Care Facilities for the
Developmental Disabled (ICF/DD)

37.106.2101 INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED (ICF/DD): APPLICATION OF OTHER RULES: COURT ORDERS (1) To the extent that other licensure rules in ARM Title 37 conflict with the provisions of this subchapter, the provisions of this subchapter will apply to intermediate care facility for the developmentally disabled (ICF/DD).

(2) Notwithstanding the requirements of this chapter, the facility shall comply with the terms and conditions of an order issued by a court of competent jurisdiction, including, but not limited to, the observance of any limitations placed upon a client's rights by the court. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2102 DEFINITIONS (1) "Abuse" is defined at 52-3-803, MCA.

(2) "Administrator" means a designated individual having daily overall management responsibility for the operation of a facility.

(3) "Client" means an adult resident, 18 years of age or older, receiving services from a facility.

(4) "Comprehensive functional assessments" identify the client's presenting problems, disabilities, specific developmental strengths, specific developmental and behavioral management needs, and need for services. This assessment must take into consideration the client's age and the implications for treatment and habilitation at each stage.

(5) "Department" means the department of public health and human services.

(6) "Direct care staff" means present on-duty staff that provide personal care and habilitation services in each defined residential living unit as well as client support services.

(7) "Direct care services" are services provided by direct care staff of the facility.

(8) "Exploitation" is defined at 52-3-803, MCA.

(9) "Facility" means an intermediate care facility for the developmentally disabled.

(10) "Guardian" means a person or entity appointed by a court in a proceeding under Title 72, chapter 5, MCA, to make decisions on behalf of an incapacitated adult.

(11) "Habilitation" is defined at 53-20-102, MCA.

(12) "Individual treatment plan" means a written plan that outlines individualized treatment activities for the treatment and habilitation of the client.

(13) "Interdisciplinary team" means individuals representing the professions, disciplines or service areas that are relevant to identifying and serving the client's needs. The team uses comprehensive functional assessments to develop and maintain the individual treatment plan for each client.

(14) "Intermediate care facility for the developmentally disabled (ICF/DD)" means a long term care facility that provides intermediate developmental disability care.

(15) "Intermediate developmental disability care" is defined at 50-5-101, MCA.

(16) "Long term care facility" is defined at 50-5-101, MCA.

(17) "Neglect" is defined at 52-3-803, MCA.

(18) "Preliminary evaluation" means evaluation of client's background information as well as currently valid assessments of functional, developmental, behavioral, social, health and nutritional status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(19) "Program staff" means facility staff serving the needs of the client within the scope of their education and training.

(20) "Sexual abuse" is defined at 52-3-803, MCA. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

Rules 03 and 04 reserved

37.106.2105 GOVERNING BODY AND MANAGEMENT (1) The facility must identify an individual or individuals to constitute the governing body of the facility. The governing body must:

(a) exercise general policy, budget, and operating direction over the facility; and

(b) appoint the administrator of the facility.

(2) The administrator appointed by the governing body shall, at a minimum:

(a) hold a current Montana nursing home administrator license;

(b) be a licensed health care professional; or

(c) have equivalent credentials approved by the department. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2106 COMPLIANCE WITH APPLICABLE LAWS (1) The facility must be in compliance with all applicable provisions of state and local laws, regulations and codes. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

Rules 07 and 08 reserved

37.106.2109 CLIENT RECORDS (1) The facility must develop and maintain a recordkeeping system that includes a separate record for each client and that documents the client's health care, treatment and habilitation, including preliminary evaluation, comprehensive functional assessments, individual treatment plan, progress notes, social information, and protection of the client's rights.

(2) The facility must keep confidential all information contained in the client's records, regardless of the form or storage method of the records.

(3) The facility must develop and implement policies and procedures governing the release of any client information, including consents necessary from the client or legal guardian.

(4) Any individual who makes an entry in a client's record must make it legibly, date it, and sign it.

(5) The facility must provide a legend to explain any symbol or abbreviation used in a client's record.

(6) The facility must provide each identified residential living unit with appropriate aspects of each client's record. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2110 SERVICES PROVIDED UNDER AGREEMENTS WITH OUTSIDE PROVIDERS (1) If a service required under this subchapter is not provided directly, the facility must have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement must:

(a) contain the responsibilities, functions, objectives, and other terms agreed to by both parties; and

(b) provide that the facility is responsible for assuring that the outside services meet the standards for quality of services contained in this subchapter.

(3) The facility must assure that outside services meet the needs of each client. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

Rules 11 through 14 reserved

37.106.2115 CLIENT PROTECTIONS, THE PROTECTION OF RESIDENTS' RIGHTS (1) The facility must ensure the rights of all of the clients and must:

(a) inform each client or legal guardian of the client's rights and the rules of the facility;

(b) inform each client or legal guardian of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;

(c) inform the individual client of their rights as a client of the facility, including the right to file complaints, the right to protection against any retaliation when filing a complaint and the right to due process;

(d) allow the individual client to manage their financial affairs and teach them to do so to the extent of their capabilities;

(e) ensure that each client is not subjected to abuse, sexual abuse, neglect, exploitation or punishment;

(f) ensure that each client is free from unnecessary drugs and unnecessary physical restraints;

(g) provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;

(h) ensure that each client is not compelled to perform services for the facility and ensure that each client who does work for the facility is compensated for their efforts at prevailing wages and commensurate with their abilities;

(i) ensure each client the opportunity to communicate, associate and meet privately with individuals and to send and receive unopened mail, except that these rights may be restricted as provided in Title 53, part 20, MCA;

(j) ensure that each client has access to telephones with privacy for incoming and outgoing local and long distance calls, except that these rights may be restricted as provided in Title 53, part 20, MCA;

(k) ensure that each client has the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in their own clothing each day, except that these rights may be restricted as provided in Title 53, part 20, MCA;

(l) ensure the client the opportunity to participate in social, religious and community group activities, except that these rights may be restricted as provided in Title 53, part 20, MCA; and

(m) permit a husband and wife who both reside in the facility to share a room. This right may only be limited by written order of the individual treatment planning team when there is no less restrictive means for preventing imminent bodily harm to either partner, or when either partner requests a separate room. The written order must explain the reason for the restriction and must be reviewed monthly by the individual treatment planning team if the restriction is to be continued.

(2) Any rights to which residents are entitled under this subchapter may be limited as provided in Title 53, part 20, MCA. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2116 CLIENT FINANCES (1) The facility must establish and maintain a system that:

(a) assures a full and complete accounting of each client's personal funds entrusted to the facility on behalf of each client; and

(b) precludes any commingling of a client's funds with facility funds or with the funds of any person other than another client.

(2) The client's financial record must be available on request to the client or legal guardian. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2117 COMMUNICATION WITH CLIENTS, PARENTS, AND GUARDIANS (1) The facility must:

(a) promote participation of the legal guardian in the process of providing treatment and habilitation to a client unless their participation is unobtainable or inappropriate;

(b) answer communications from the client's family and friends promptly and appropriately;

(c) permit visits by the guardian to any area of the facility that provides direct client care services to the client, consistent with the right of that client's and other clients' privacy;

(d) notify the client or client's guardian of changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence in a timely manner as indicated by an assessment of the individual incident. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2118 PREVENTION, INVESTIGATION, AND REPORTING OF CLIENT ABUSE, SEXUAL ABUSE, NEGLECT AND EXPLOITATION (1) The facility must develop and implement written policies and procedures to prevent abuse, sexual abuse, neglect, or exploitation of the client.

(2) Facility staff must report all known or suspected incidents of client abuse, sexual abuse, neglect or exploitation to the facility administrator, and the facility administrator or his or her designee shall report said incidents to the department in accordance with the requirements of Title 52, chapter 3, part 8, MCA.

(3) The facility must develop and implement written policies and procedures for the investigation of allegations of client abuse, sexual abuse, neglect or exploitation.

(4) The results of all facility investigations of client abuse, sexual abuse, neglect or exploitation must be reported to the department when the investigation has been initiated and upon completion. If an allegation of client abuse, sexual abuse, neglect or exploitation is verified, appropriate corrective action must be taken. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2119 PROFESSIONAL PROGRAM SERVICES (1) Each client must receive the professional program services necessary to implement the treatment and habilitation program defined by each client's individual treatment plan. In providing these services, professional program staff must work directly with each client and with paraprofessional, nonprofessional and other professional program staff who work with each client.

(2) The facility must have available program staff to carry out and monitor the interventions in accordance with the stated goals and objectives of every individual treatment plan.

(3) Program staff must participate as members of the interdisciplinary team in relevant aspects of the treatment and habilitation process.

(4) Professional program staff must be licensed, certified, or registered, as applicable, by the state of Montana to provide professional services.

(5) Program staff must serve the special needs of the client as defined by the individual treatment plan. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

Rules 20 through 24 reserved

37.106.2125 FACILITY STAFFING (1) The facility must not depend upon the client or volunteers to perform direct care services for the facility.

(2) There must be responsible direct care staff on duty and awake on a 24 hour basis, when any client is present, to take prompt, appropriate action in case of injury, illness, fire or other emergency.

(3) The facility must provide sufficient support staff so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2126 DIRECT CARE STAFF (1) The facility must provide sufficient direct care staff to manage and supervise each client in accordance with their individual treatment plan.

(2) Direct care staff must be provided by the facility in the following minimum ratios of direct care staff to clients:

(a) a staff to client ratio of 1 to 3.2 for each defined residential living unit serving:

(i) any severely and profoundly retarded client;

(ii) a client with severe physical disabilities;

(iii) any client who is aggressive, assaultive, or a security risk; or

(iv) any client who manifests severely hyperactive or psychotic-like behavior.

(b) for each defined residential living unit who serves any moderately retarded client, the staff to client ratio is 1 to 4.

(c) for each defined residential living unit who serves any client who functions within the range of mild retardation, the staff to client ratio is 1 to 6.4.

(3) The above staff to client ratios shall be calculated for each defined residential living unit based on the number of direct care staff who are present and on-duty during all shifts in a 24 hour period. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2127 STAFF TRAINING (1) The facility must provide each staff member with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently.

(2) For staff members who work with any client, training must focus on skills and competencies directed toward the client's developmental, behavioral, and health needs.

(3) Staff must be able to demonstrate the skills and techniques necessary to administer interventions to manage the inappropriate behavior of any client.

(4) Staff must be able to demonstrate the skills and techniques necessary to implement the individual treatment plan for each client for whom they are responsible. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

Rules 28 through 30 reserved

37.106.2131 INDIVIDUAL RESIDENTIAL TREATMENT AND HABILITATION NEEDS (1) Each client must be offered a treatment and habilitation program which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services described in this subchapter, that is directed toward:

(a) the acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible; and

(b) the prevention or deceleration of regression or loss of current optimal functional status. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2132 ADMISSIONS, TRANSFERS, DISCHARGE AND FAIR HEARING (1) Admission decisions must be based on a preliminary evaluation of the client that is conducted or updated by the facility or by outside sources, except that admission procedures regarding clients which have been committed to the facility by a court of competent jurisdiction shall be conducted pursuant to Title 53, chapter 20, part 1, MCA.

(2) A preliminary evaluation must contain background information as well as currently valid assessments of functional, developmental, behavioral, social, health and nutritional status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(3) If a client is to be either transferred or discharged from the facility, the facility must:

(a) have documentation in the client's record that the client was transferred or discharged for good cause; and

(b) provide a reasonable time to prepare the client or guardian for the transfer or discharge (except in emergencies).

(4) At the time of the discharge, the facility must:

(a) develop a final summary of the client's developmental, behavioral, social, health and nutritional status and, with the consent of the client or legal guardian, provide a copy to authorized persons and agencies; and

(b) provide a post-discharge plan of care that will assist the client in adjusting to the new living environment.

(5) A resident has a right to a fair hearing to contest an involuntary transfer or discharge as provided at ARM 37.5.116. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2133 INDIVIDUAL TREATMENT PLANS (1) Each client must have an individual treatment plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to:

(a) identifying the client's needs, as described by the comprehensive functional assessments required in (3); and

(b) designing programs that meet the client's needs.

(2) Appropriate facility staff must participate in interdisciplinary team meetings. Participation by other agencies serving the client is encouraged. Participation by the client or the client's legal guardian is required unless that participation is unobtainable or inappropriate.

(3) Within 30 days after admission, the interdisciplinary team must perform accurate assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission. The comprehensive functional assessment must take into consideration the client's age (for example a young adult, an elderly person) and the implications for treatment and habilitation at each stage, as applicable, and must:

(a) identify the presenting problems and disabilities and where possible, their causes;

(b) identify the client's specific developmental strengths;

(c) identify the client's specific developmental and behavioral management needs;

(d) identify the client's need for services without regard to the actual availability of the services needed; and

(e) include physical development and health, nutritional status, sensory motor development, affective development, speech and language development and auditory functioning, cognitive development, social development, adaptive behaviors or independent living skills necessary for the client to be able to function in the community, and as applicable, vocational skills.

(4) Within 30 days after admission, the interdisciplinary team must prepare for each client an individual treatment plan that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by (3), and the planned sequence for dealing with those objectives. These objectives must be:

(a) stated separately, in terms of a single behavioral outcome;

(b) assigned projected completion dates;

(c) expressed in behavioral terms that provide measurable indices of performance;

(d) organized to reflect a developmental progression appropriate to the individual; and

(e) assigned priorities.

(5) Each written training program designed to implement the objectives in the individual treatment plan must specify:

(a) the methods to be used;

(b) the schedule for use of the method;

(c) the person responsible for the program;

(d) the type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;

(e) the inappropriate client behavior(s), if applicable; and

(f) provision for the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

- (6) The individual treatment plan must also:
- (a) describe relevant interventions to support the individual toward independence;
 - (b) identify the location where program strategy information (which must be accessible to any person responsible for implementation) can be found;
 - (c) include, for each client who lacks them, training in personal skills essential for privacy and independence (including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication of basic needs) until it has been demonstrated that the client is developmentally incapable of acquiring them;
 - (d) identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. The plan must specify the reason for each support, the situations in which each is to be applied, and a schedule for the use of each support;
 - (e) provide that each client who has multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible; and
 - (f) include opportunities for client choice and self-management.
- (7) Relevant portions of each client's individual treatment plan must be made available to appropriate staff, including staff of other agencies who work with the client and to the client or legal guardian. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

Rules 34 and 35 reserved

37.106.2136 PROGRAM IMPLEMENTATION (1) As soon as the interdisciplinary team has formulated a client's individual treatment plan, each client must be offered a continuous treatment and habilitation program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual treatment plan.

(2) Except for those facets of the individual treatment plan that must be implemented only by licensed personnel, each client's individual treatment plan must be implemented by all staff who work with the client. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2137 PROGRAM DOCUMENTATION (1) Data relative to accomplishment of the criteria specified in client individual treatment plan objectives must be documented in measurable terms.

(2) The facility must document significant events that are related to the client's individual treatment plan and assessments and that contribute to an overall understanding of the client's ongoing level and quality of functioning.

(3) The facility staff must prepare progress notes which indicate whether or not the stated individual treatment plan has been implemented, and the degree to which the client is progressing, or failing to progress, toward stated treatment objectives. The progress notes must be entered into the client's clinical record at least weekly and upon the occurrence of any significant change in the client's condition. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2138 PROGRAM MONITORING AND CHANGE (1) At least annually the comprehensive functional assessment of each client must be reviewed by the interdisciplinary team for relevancy and updated as needed, and the individual treatment plan must be revised, as appropriate, repeating the process set forth in ARM 37.106.2133(3).

(2) The individual treatment plan for each client must be reviewed by the interdisciplinary team every 90 days and whenever there is a significant change in the client's condition. The individual treatment plan must be revised, as appropriate.

(3) The facility must designate and use a specially constituted committee or committees consisting of members of facility staff, legal guardians, clients (as appropriate), qualified persons who have either experience or training in contemporary practices to change inappropriate client behavior, and persons with no ownership or controlling interest in the facility to:

(a) review, approve, and monitor individual treatments designed to manage inappropriate behavior and other treatments that, in the opinion of the committee, involve risks to client protection and rights;

(b) ensure that these treatments are conducted only after the client or legal guardian has been informed; and

(c) review, monitor and make suggestions to the facility about its practices and programs as they relate to:

- (i) drug usage;
- (ii) physical restraints;
- (iii) time out rooms;
- (iv) application of painful or noxious stimuli;
- (v) control of inappropriate behavior;
- (vi) protection of client rights and funds; and
- (vii) any other area that the committee believes needs to be addressed. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2139 MANAGEMENT OF CONDUCT BETWEEN STAFF AND THE CLIENT (1) The facility must develop and implement written policies and procedures for the management of conduct between staff and the client. These policies and procedures must:

(a) promote the growth, development and independence of the client;

(b) address the extent to which the client's choice will be accommodated in daily decision-making, emphasizing self-determination and self-management, to the extent possible;

(c) specify client conduct to be allowed or not allowed; and

(d) be available to all staff, the client and the legal guardian.

(2) To the extent possible, each client must participate in the formulation of these policies and procedures.

(3) The client must not discipline any other client, except as part of an organized system of self-government, as set forth in facility policy. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2140 MANAGEMENT OF INAPPROPRIATE CLIENT BEHAVIOR

(1) The facility must develop and implement written policies and procedures that govern the management of inappropriate client behavior only as allowed in 53-20-146, MCA. These policies and procedures must be consistent with the provisions of ARM 37.106.2139, and must:

(a) specify all facility-approved interventions to manage inappropriate client behavior;

(b) designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive;

(c) ensure, prior to the use of more restrictive techniques, that the client's record documents that programs incorporating the use of less intrusive or more positive techniques have been tried systematically and demonstrated to be ineffective; and

- (d) address the following:
 - (i) the use of secured units;
 - (ii) the use of observation and seclusion rooms;
 - (iii) the use of physical restraints;
 - (iv) the use of time out procedures;
 - (v) the use of appropriate medication to manage inappropriate behavior;
 - (vi) the application of painful or noxious stimuli;
 - (vii) the staff members who may authorize the use of specified interventions; and
 - (viii) a mechanism for monitoring and controlling the use of such interventions.
- (2) Interventions to manage inappropriate client behavior must be employed with sufficient safeguards and supervision to ensure that the safety, welfare and civil and human rights of each client are adequately protected.
- (3) Techniques to manage inappropriate client behavior must never be used for disciplinary purposes, for the convenience of staff or as a substitute for a treatment and habilitation program.
- (4) The use of systematic interventions to manage inappropriate client behavior must be incorporated into the client's individual treatment plan.
- (5) Standing or as needed programs to control inappropriate behavior are not permitted. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

Rules 41 through 43 reserved

37.106.2144 OBSERVATION AND SECLUSION ROOMS (1) A client may be placed in a an observation and seclusion room from which egress is prevented only as allowed in 53-20-146, MCA and only if the following conditions are met:

- (a) The placement is required because of an emergency situation requiring immediate action or for other therapeutic purposes.
- (b) The client is under the direct constant visual supervision of designated staff.
- (c) The door to the room may be locked. The lock must comply with the standards for locks in ARM 37.106.2163(9).
- (d) A licensed professional shall examine the client and provide written approval within the first three hours of placement unless the client has a long history of episodic violence. In these cases the examination and approval shall be obtained within the first 12 hours of placement.

(2) Placement of a client in an observation and seclusion room must be reassessed and documented in writing every hour. A client cannot be placed in an observation and seclusion room for more than 24 continuous hours.

(3) A client placed in an observation and seclusion room must be protected from hazardous conditions including, but not limited to, presence of sharp corners and objects, uncovered light fixtures, unprotected electrical outlets.

(4) A record of observation and seclusion activities must be kept.

(5) An intermediate care facility for the developmentally disabled shall:

(a) designate specific rooms designed for observation/seclusion purposes; and

(b) develop policies and procedures for the use and maintenance of the observation/seclusion rooms. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2145 PHYSICAL RESTRAINTS (1) The facility may employ physical restraint only as allowed in 53-20-146, MCA and only as:

(a) an emergency measure, but only if absolutely necessary to protect the client or others from injury; or

(b) a health-related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for client protection during the time that a medical condition exists.

(2) The facility must not issue orders for restraint on a standing or as needed basis.

(3) A client placed in restraint must be checked at least every 30 minutes by staff trained in the use of restraints, released from the restraint as quickly as possible, and a record of these checks and usage must be kept.

(4) Restraints must be designed and used so as not to cause physical injury to the client and so as to cause the least possible discomfort.

(5) Opportunity for motion and exercise must be provided for a period of not less than 10 minutes during each two hour period in which restraint is employed, and a record of such activity must be kept.

(6) A licensed professional shall examine the client and provide written approval for restraint within the first three hours of placement and shall monitor and record the client's progress every 24 hours thereafter. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2146 DRUG USAGE (1) Drugs used for control of inappropriate behavior must be approved by the interdisciplinary team and be used only as an integral part of the client's individual treatment plan that is directed specifically toward the reduction of and eventual elimination of the behaviors for which the drugs are employed.

(2) Drugs used for control of inappropriate behavior must not be used until it can be justified that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the drugs.

(3) Drugs used for control of inappropriate behavior must be monitored closely, in conjunction with the physician and the drug regimen review requirement at ARM 37.106.2153, for desired responses and adverse consequences by facility staff. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

Rules 47 through 49 reserved

37.106.2150 HEALTH CARE AND PHYSICIAN SERVICES (1) The facility must ensure the availability of physician services 24 hours a day.

(2) The physician must develop, in coordination with licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that an individual client requires 24 hour licensed nursing care. This plan must be integrated in the individual treatment plan.

(3) The facility must provide or obtain preventive and general medical care as well as annual physical examinations of each client that at a minimum include the following:

(a) evaluation of vision and hearing;

(b) immunizations, using as a guide the recommendations of the public health service advisory committee on immunization practices or of the committee on the control of infectious diseases of the American academy of pediatrics;

(c) routine screening laboratory examinations as determined necessary by the physician, and special studies when needed; and

(d) tuberculosis control, appropriate to the facility's population, and in accordance with the recommendations of the American college of chest physicians or the rule of diseases of the chest of the American academy of pediatrics, or both.

(4) To the extent permitted by Montana law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this rule.

- (5) A physician must participate in:
- (a) the establishment of each newly admitted client's initial individual treatment plan; and
 - (b) if appropriate, the review and update of an individual treatment plan as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2151 NURSING SERVICES AND STAFF (1) The facility must provide each client with nursing services in accordance with their needs, including:

- (a) participation as appropriate in the development, review, and update of an individual treatment plan as part of the interdisciplinary team process;
- (b) the development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan;
- (c) for each client who is certified as not needing a medical care plan, a review of their health status which must:
 - (i) be by a direct physical examination;
 - (ii) be by a licensed nurse;
 - (iii) be on a quarterly or more frequent basis depending on client need;
 - (iv) be recorded in the client's record; and
 - (v) result in any necessary action (including referral to a physician to address client health problems);
- (d) other nursing care as prescribed by the physician or as identified by client needs; and
- (e) implementation of appropriate protective and preventive health measures that include, but are not limited to:
 - (i) training any client and staff as needed in appropriate health and hygiene methods;
 - (ii) control of communicable diseases and infections, including the instruction of other personnel in methods of infection control; and
 - (iii) training of direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the client.

- (2) The facility must:
- (a) employ or arrange for licensed nursing services sufficient to care for the client's health needs including any client with a medical care plan;
 - (b) utilize registered nurses as appropriate and required by Montana law to perform the health services specified in this rule;

(c) have a formal arrangement with a registered nurse to be available for verbal or on site consultation to the licensed practical or vocational nurses (if utilizing only licensed practical or vocational nurses to provide health services); and

(d) permit non-licensed nursing personnel who work with any client under a medical care plan to do so only under the supervision of licensed persons.

(3) Nurses providing services in the facility must have a current license to practice in Montana. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2152 DENTAL SERVICES AND TREATMENT (1) The facility must provide or make arrangements for comprehensive dental diagnostic and treatment services for each client from qualified personnel, including licensed dentists and dental hygienists either through organized dental services in-house or through arrangement.

(2) If appropriate, dental professionals must participate in the development, review and update of an individual treatment plan as part of the interdisciplinary process either in person or through written report to the interdisciplinary team.

(3) The facility must provide education and training in the maintenance of oral health.

(4) Comprehensive dental diagnostic services must include:

(a) a complete extraoral and intraoral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility (unless the examination was completed within 12 months before admission);

(b) periodic examination and diagnosis performed at least annually, including radiographs when indicated and detection of manifestations of systemic disease; and

(c) a review of the results of examination and entry of the results in the client's dental record.

(5) Comprehensive dental treatment services must include:

(a) the availability for emergency dental treatment on a 24 hour basis by a licensed dentist; and

(b) dental care needed for relief of pain and infections, restoration of teeth, and maintenance of dental health.

(6) If the facility maintains an in-house dental service, the facility must keep a permanent dental record for each client with a dental summary maintained in the client's living unit. If the facility does not maintain an in-house dental service, the facility must obtain a dental summary of the results of dental visits and maintain the summary in the client's living unit. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2153 PHARMACY SERVICES AND DRUG REGIMEN REVIEW

(1) The facility must provide or make arrangements for the provision of routine and emergency drugs and biologicals to each client. Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy.

(2) A pharmacist with input from the interdisciplinary team must review the drug regimen of each client at least quarterly, and:

(a) report any irregularities in the client's drug regimen to the prescribing physician and interdisciplinary team; and

(b) prepare a record of each client's drug regimen reviews which must be maintained by the facility.

(3) As appropriate, the pharmacist must participate in the development, implementation, and review of each client's individual treatment plan either in person or through written report to the interdisciplinary team.

(4) The facility must maintain an individual medication administration record for each client. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2154 DRUG ADMINISTRATION, STORAGE, AND RECORDKEEPING (1) The facility must have an organized system for drug administration that identifies each drug up to the point of administration. The system must assure that:

(a) all drugs are administered in compliance with the physician's orders;

(b) all drugs, including those that are self-administered, are administered without error;

(c) each client is taught how to administer their own medications if the interdisciplinary team determines that self-administration of medications is an appropriate objective, and if the physician does not specify otherwise;

(d) the client's physician is informed of the interdisciplinary team's decision that self-administration of medications is an objective for the client;

(e) no client self-administers medications until he or she demonstrates the competency to do so;

(f) drugs used by any client while not under the direct care of the facility are packaged and labeled in accordance with Montana law; and

(g) drug administration errors and adverse drug reactions are recorded and reported immediately to a physician.

(2) The facility must:

(a) store drugs under proper conditions of sanitation, temperature, light, humidity, and security;

(b) keep all drugs and biologicals locked except when being prepared for administration, and only permit authorized persons to have access to the keys to the drug storage area, except that any client who has been trained to self-administer drugs may have access to keys to their individual drug supply;

(c) maintain records of the receipt and disposition of all controlled drugs;

(d) on a sample basis, periodically reconcile the receipt and disposition of all controlled drugs in schedules II through IV of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 et seq., as implemented by 21 CFR part 308; and

(e) comply with the regulations of controlled drugs if the facility maintains a licensed pharmacy.

(3) Labeling of drugs and biologicals must:

(a) be based on currently accepted professional principles and practices; and

(b) include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(4) The facility must remove from use:

(a) outdated drugs; and

(b) drug containers with worn, illegible, or missing labels.

(5) Drugs and biologicals packaged in containers designated for a particular client must be immediately removed from the client's current medication supply if discontinued by the physician. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

Rules 55 through 59 reserved

37.106.2160 LABORATORY SERVICES (1) If a facility chooses to provide laboratory services, the laboratory must meet the requirements specified in 42 CFR part 493.

(2) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be certified in the appropriate specialties and subspecialties of service in accordance with the requirements of 42 CFR part 493. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2161 PHYSICAL ENVIRONMENT (1) The facility must not:

(a) house any client of a grossly different age, developmental level, and social need in close physical or social proximity unless the housing is planned to promote the growth and development of all those housed together; or

(b) segregate the client solely on the basis of their physical disabilities. It must integrate the client who has ambulation deficits or who is deaf, blind, or has a seizure disorder, etc., with others of comparable social and intellectual development.

(2) Bedrooms must:

(a) be rooms that have at least one outside wall;

(b) be equipped with or located near toilet and bathing facilities;

(c) accommodate no more than four clients;

(d) measure at least 80 square feet per client in multiple client bedrooms and at least 100 square feet in single client bedrooms; and

(e) have walls that extend from floor to ceiling.

(3) If a bedroom is below ground level, it must have a window that is:

(a) usable as a second means of escape by the client occupying the room; and

(b) no more than 44 inches (measured to the window sill) above the floor unless the facility is surveyed under the health care occupancy chapter of the Life Safety Code (LSC), 2000 edition, in which case the window must be no more than 36 inches (measured to the window sill) above the floor.

(4) The facility must provide each client with:

(a) a separate bed of proper size and height for the convenience of the client;

(b) a clean, comfortable mattress;

(c) bedding appropriate to the weather and climate; and

(d) functional furniture and individual closet space in the client's bedroom with clothes racks and shelves accessible to the client and appropriate to the client's needs.

(5) The facility must provide:

(a) space and equipment for daily out-of-bed activity for each client who is not yet mobile, except those who have a short-term illness or any client for whom out-of-bed activity is a threat to health and safety; and

(b) suitable storage space, accessible to the client, for personal possessions, such as TVs, radios, prosthetic equipment and clothing.

(6) The facility must:

(a) provide toilet and bathing facilities appropriate in number, size and design to meet the needs of the client;

(b) provide for individual privacy in toilets, bathtubs and showers; and

(c) in areas of the facility where the client who has not been trained to regulate water temperature and is exposed to hot water, ensure that the temperature of the water does not exceed 110°F.

- (7) Each client bedroom in the facility must have:
 - (a) at least one window to the outside; and
 - (b) direct outside ventilation by means of windows, air conditioning or mechanical ventilation.
- (8) The facility must:
 - (a) maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means; and
 - (b) ensure that the heating apparatus does not constitute a burn or smoke hazard to the client.
- (9) The facility must have:
 - (a) floors that have a resilient, nonabrasive and slip-resistant surface;
 - (b) nonabrasive carpeting, if the area used by a client is carpeted and serves a client who lies on the floor or ambulates with parts of their bodies, other than feet, touching the floor; and
 - (c) exposed floor surfaces and floor coverings that promote mobility in an area used by a client and promote maintenance of sanitary conditions.
- (10) The facility must:
 - (a) provide sufficient space and equipment that includes adequately equipped and sound treated areas for hearing and other evaluations if they are conducted in the facility. This enables staff to provide the client with needed services as required by this subchapter and as identified in each client's individual treatment plan in:
 - (i) dining;
 - (ii) living;
 - (iii) health services;
 - (iv) recreation; and
 - (v) program areas;
 - (b) furnish and maintain in good repair and teach the client to use and to make informed choices about the use of:
 - (i) dentures;
 - (ii) eyeglasses;
 - (iii) hearing and other communications aids;
 - (iv) braces; and
 - (v) other devices identified by the interdisciplinary team as needed by the client; and
 - (c) provide adequate clean linen and dirty linen storage areas.
- (11) The facility must:
 - (a) use lead free paint inside the facility; and
 - (b) remove or cover interior paint or plaster containing lead so that it is not accessible to the client. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2162 EMERGENCY PLAN AND PROCEDURES (1) The facility must develop and implement detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and a missing client.

(2) The facility must communicate, periodically review, make the plan available and provide training to the staff.

(3) The facility must hold evacuation drills at least quarterly for each shift of personnel and under varied conditions to:

(a) ensure that all personnel on all shifts are trained to perform assigned tasks;

(b) ensure that all personnel on all shifts are familiar with the use of the facility's fire protection features; and

(c) evaluate the effectiveness of emergency and disaster plans and procedures.

(4) The facility must:

(a) actually evacuate the clients during at least one drill each year on each shift;

(b) make special provisions for the evacuation of a client with a physical disability;

(c) file a report and evaluation on each evacuation drill;

(d) investigate all problems with evacuation drills, including accidents, and take corrective action; and

(e) during fire drills, a client may be evacuated to a safe area in the facility certified under the health care occupancies chapter of the LSC. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2163 SECURED UNITS (1) A secured unit within a facility shall have a written policy outlining resident admission criteria, transfer criteria and discharge criteria for the secured unit.

(2) Provisions should be made for secured unit residents to access large group activities when provided by the facility, e.g., holiday activities, etc. except as contraindicated by factors identified within their individual treatment plans.

(3) A secured unit within a facility is considered a separate unit. A staff station shall be located within the secured unit. The station shall provide at a minimum the following:

(a) provisions for charting;

(b) provisions for hand washing;

(c) provisions for medication storage and preparation;

(d) telephone access; and

(e) a nurse/staff call system as required by the "Guidelines for the Construction and Equipment of Hospital and Medical Facilities", as adopted in ARM 37.106.302.

(4) The nurse/staff call system for a secured unit within a facility shall report to the unit nurse/staff station. The call system may also annunciate the call at another location, such as a main nurse station.

(5) A secured unit within a facility shall provide for a nourishment station. The nourishment station shall contain a work counter, refrigerator, storage cabinets and a sink for serving nourishments between meals. Ice for patient consumption should be provided by icemaker-dispenser units. The nourishment station should include space for trays and dishes used for nonscheduled meal service. Hand washing facilities shall be in or immediately accessible from the nourishment station.

(6) Dining, activities and day space must be provided at a ratio of 30 square feet per resident, with at least 14 square feet dedicated to the dining space.

(7) Resident rooms must be at a ratio of 100 square feet for single bedrooms and 80 square feet for multiple bedrooms. The room square footage should not include bathrooms, door swings, alcoves or vestibules. No more than four residents shall reside in a single room, except in new construction which limits single rooms to two residents.

(8) Each resident must have access to a toilet without requiring them to enter the corridor except as contraindicated by factors identified within their individual treatment plans.

(9) A secured unit within a facility shall comply with the following requirements for special locking arrangements. In buildings protected throughout by an approved supervised automatic fire detection system or approved supervised automatic sprinkler system, the doors in low and ordinary hazard areas may be equipped with approved, listed, locking devices which shall:

(a) unlock upon actuation of an approved supervised automatic fire detection system or approved supervised automatic sprinkler;

(b) unlock upon loss of power controlling the lock or locking mechanism;

(c) all locks used must be electromagnetic. The use of mechanical locks, such as a dead bolt is not permitted;

(d) all secured doors must have a manual electronic key release;

(e) provisions must be made for the rapid removal of occupants by such reliable means as the remote control of the locks. Typically, this is done by placing a staff accessible switch at the nurses station which is capable of releasing all doors; and

(f) all the locks on all secured doors must automatically release upon any of the following conditions:

(i) the actuation of the approved supervised automatic fire alarm system;

(ii) the actuation of an approved supervised automatic sprinkler system; or

(iii) upon the loss of the power controlling the locks or locking mechanisms. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2164 FIRE PROTECTION (1) The facility must meet the applicable provisions of either the health care occupancies chapters or the residential board and care occupancies chapter of the Life Safety Code (LSC), 2000 edition, of the National Fire Protection Association (NFPA), 2000 edition, which is incorporated by reference. A copy of the LSC, 2000 edition, may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

(a) The department may apply a single chapter of the LSC to the entire facility or may apply different chapters to different buildings or parts of buildings as permitted by the LSC.

(b) A facility that meets the LSC definition of a residential board and care occupancy and that has 16 or fewer beds must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the LSC (Appendix F).

(2) For facilities that meet the LSC definition of a health care occupancy:

(a) the department may waive, for a period it considers appropriate, specific provisions of the LSC if:

(i) the waiver would not adversely affect the health and safety of the clients; and

(ii) rigid application of specific provisions would result in an unreasonable hardship for the facility. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

Rules 65 through 69 reserved

37.106.2170 INFECTION CONTROL (1) The facility must provide a sanitary environment to avoid sources and transmission of infections. There must be policies and procedures for the prevention, control and investigation of infection and communicable diseases.

(2) The facility must implement successful corrective action in affected problem areas.

(3) The facility must maintain a record of incidents and corrective actions related to infections.

(4) The facility must prohibit employees with symptoms or signs of a communicable disease from direct contact with the client and their food.

(5) All staff shall use the proper hand washing techniques after providing direct care to a resident. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.106.2171 DIETETIC SERVICES (1) Each client must receive a nourishing, well-balanced diet including modified and specially-prescribed diets.

(2) A qualified dietitian must be employed either full-time, part-time or on a consultant basis at the facility's discretion.

(3) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food services.

(4) The client's interdisciplinary team, including a qualified dietitian and physician, must prescribe all modified and special diets including those used as a part of a treatment to manage inappropriate client behavior.

(5) Foods proposed for use as a primary reinforcement of adaptive behavior are evaluated in light of the client's nutritional status and needs.

(6) Unless otherwise specified by medical needs, the diet must be prepared at least in accordance with the "Nutrition and Your Health: Dietary Guidelines for Americans", 2000, 5th edition of the recommended dietary allowances published by the Food and Nutrition Board of the National Research Council, National Academy of Sciences, adjusted for age, sex, disability and activity.

(7) Each client must receive at least three meals daily, at regular times comparable to normal mealtimes in the community with:

(a) not more than 14 hours between a substantial evening meal and breakfast of the following day, except on weekends and holidays when a nourishing snack is provided at bedtime, 16 hours may elapse between a substantial evening meal and breakfast; and

- (b) not less than 10 hours between breakfast and the evening meal of the same day.
- (8) Food must be served:
 - (a) in appropriate quantity;
 - (b) at appropriate temperature;
 - (c) in a form consistent with the developmental level of the client; and
 - (d) with appropriate utensils.
- (9) Food served to the client individually and uneaten must be discarded.
- (10) Menus must:
 - (a) be prepared in advance;
 - (b) provide a variety of foods at each meal;
 - (c) be different for the same days of each week and adjusted for seasonal changes; and
 - (d) include the average portion sizes for menu items.
- (11) Menus for food actually served must be kept on file for 60 days.
- (12) The facility must:
 - (a) serve meals for each client, including persons with ambulation deficits, in dining areas, unless otherwise specified by the interdisciplinary team or a physician;
 - (b) provide table service for each client who can and will eat at a table, including a client in a wheelchair;
 - (c) equip areas with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each client;
 - (d) supervise and staff dining rooms adequately to direct self-help dining procedure, to assure that each client receives enough food and to assure that each client eats in a manner consistent with his or her developmental level; and
 - (e) ensure that each client eats in an upright position, unless otherwise specified by the interdisciplinary team or a physician. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

Rules 72 through 79 reserved

37.106.2180 FACILITY FAIR HEARING (1) A facility has the right to appeal licensure decisions as outlined in 50-5-208, MCA.

(2) The department shall follow the hearing procedure for fair hearings as outlined at ARM 37.5.117. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

Subchapter 22

Residential Treatment Facilities

37.106.2201 RESIDENTIAL TREATMENT FACILITY: APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in this chapter conflict with the terms of ARM 37.106.2202 and 37.106.2203, the terms of ARM 37.106.2202 and 37.106.2203 will apply to residential treatment facilities. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-201, MCA; NEW, 1994 MAR p. 304, Eff. 2/11/94; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2202 RESIDENTIAL TREATMENT FACILITY: LICENSURE STANDARDS (1) A residential treatment facility must meet the requirements of the following:

(a) The standards for the following categories, contained in the Joint Commission on Accreditation of Health Care Organizations' 1993 Accreditation Manual for Mental Health, Chemical Dependency, and Mental Retardation/Developmental Disabilities Services:

(i) administrative/clinical management, as specified under the following headings:

(A) governance and management (GM);

(B) professional staff organization (PO), with the exception of PO.2.5.8.1;

(C) human resources management (HR);

(D) planning and evaluation (PE);

(E) quality assessment and improvement (QA);

(F) utilization review (UR);

(G) research (RS), if provided;

(H) patient rights (PI);

(I) clinical records management (CR);

(ii) patient services, as specified under the following headings:

(A) patient management (PM);

(B) child and adolescent services (CA);

(C) forensic services (FC), if provided;

(D) special treatment procedures (SC), if provided;

(iii) patient support services, as specified under the following headings:

(A) nutrition services (NU);

(B) emergency services (ER);

(C) pharmacy services (PH), as specified for residential settings in Appendix A;

(D) physical health services (PY);

(E) libraries and information networks (LI);

(F) rehabilitation services (RH), as specified for residential settings in Appendix A;

(iv) environmental management, as specified under the following headings:

(A) plant, technology and safety management (PL), as specified for residential settings in Appendix A;

(B) therapeutic environment (TH);

(C) infection control (IC), with the exception of IC.2.2.1 and IC.2.2.2.2--IC.2.2.4.1; and

(v) for facilities in existence or for which construction had commenced prior to February 11, 1994, the interim life safety measures contained in Appendix D.

(b) The standards contained in Title 42 CFR, part 441, subpart D, as they exist on October 1, 1992.

(2) A residential treatment facility may not share direct care staff or provide joint activities or treatment in conjunction with another type of health care facility, even if both facilities are under the same management, unless the joint activity involves facilities under a single management and is a specific treatment program that is clinically appropriate for all of the children engaged in it (e.g. appropriate for patients of both a residential treatment facility and an inpatient acute psychiatric facility).

(3) The number of residents admitted to the facility and the number of beds in use and/or ready for use may not exceed the number of beds for which the facility is licensed, as indicated on the face of the license issued to it.

(4) The department hereby adopts and incorporates by reference the 1993 Accreditation Manual for Mental Health, Chemical Dependency, and Mental Retardation/Developmental Disabilities Services, published by the Joint Commission on Accreditation of Healthcare Organizations, which contains accreditation standards for facilities providing mental health services, and Title 42 of the Code of Federal Regulations (CFR), part 441, subpart D (effective October 1, 1992), which contains standards for provision of inpatient psychiatric services to individuals under age 21. Copies of these standards are available from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-201, MCA; NEW, 1994 MAR p. 304, Eff. 2/11/94; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2203

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

37.106.2203 RESIDENTIAL TREATMENT FACILITIES: SEPARATE LICENSES (1) Separate residential treatment facility licenses are not required for separate buildings within the same community if they are utilized to provide residential psychiatric care under the same management. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-201, MCA; NEW, 1994 MAR p. 304, Eff. 2/11/94; TRANS, from DHES, 2002 MAR p. 185.)

Subchapter 23

Minimum Standards for Hospice Facilities

37.106.2301 MINIMUM STANDARDS FOR A HOSPICE PROGRAM:
GENERAL (1) The following definitions apply in this rule and ARM 37.106.2305 and 37.106.2311:

(a) "Bereavement" means that period of time during which survivors mourn a death and experience grief.

(b) "Bereavement services" means support services to be offered during the bereavement period.

(c) "Contract services" means persons or organizations who, under written agreement, provide goods and services to the hospice and its patients and their families.

(d) "Core services" means physician services, nursing services, pastoral counseling, services provided by trained volunteers, and counseling services routinely provided by hospice staff.

(e) "Family" means individuals who are closely linked with the hospice patient, including the immediate family, the primary care giver, and individuals with significant personal ties.

(f) "Hospice" or "hospice program" means a public agency or private organization (or a subdivision thereof) as defined in 50-5-101(22), MCA, which is primarily engaged in providing hospice care.

(g) "Hospice care" means palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying, and that includes a formal bereavement component.

(h) "Hospice staff" means paid or unpaid persons, including volunteers, who are directly supervised by the hospice program.

(i) "Interdisciplinary team" means the number of appropriately qualified interdisciplinary health care professionals and volunteers that are needed to meet the hospice's patients' care needs.

(j) "Managed directly by" means that core services are provided by a hospice program.

- (2) A hospice program may be licensed to operate either:
- (a) as a part of a licensed hospital without its own license when the department finds that the hospital's hospice program meets the requirements set forth in this rule; or
 - (b) with its own hospice license when the department finds that it meets the requirements set forth in this rule.
- (3) A hospice program must have the following organizational components:
- (a) a formally established governing body with authority to make decisions affecting the operation of the hospice;
 - (b) an organization chart defining reporting relationships among hospice workers;
 - (c) A statement of patient rights and the rights of a patient's family;
 - (d) established policies for the administration and operation of the program, including but not limited to:
 - (i) written criteria for program admission and discharge;
 - (ii) procedures for bereavement referrals and assistance;
 - (iii) development of a plan of care;
 - (iv) agreements with other licensed health care facilities for proper transfer of patients and follow up of plans of care;
 - (v) system(s) for recordkeeping;
 - (vi) patient care procedures; and
 - (vii) in-service education.
 - (e) Development of annual budgets;
 - (f) Annual evaluation of each aspect of the hospice program, including the program's quality assessment and improvement measures and a system to implement recommendations for future program planning.
- (4) A hospice program must have an interdisciplinary team responsible for the provision of hospice care. The interdisciplinary team must:
- (a) Confer or meet regularly;
 - (b) Have responsibility for implementation of each individual plan of care as directed by an identified coordinator;
 - (c) Encourage the patient/family to participate in developing the interdisciplinary team plan of care and in the provision of hospice services.
- (5) A hospice program must assure that each patient has a physician who is the patient's primary physician and assists in the development of the patient's care plan.

(6) A hospice program must maintain a medical record for every individual accepted as a hospice patient. The medical record must include:

- (a) patient identification, diagnosis, prognosis;
- (b) patient's medical history;
- (c) patient's plan of care;
- (d) a record of doctor's hospice orders;
- (e) progress notes, dated and signed; and
- (f) evidence of timely action by the patient care team.

(7) A hospice program which utilizes volunteers must provide volunteer training which includes:

- (a) information concerning hospice philosophy;
- (b) instruction on the volunteer's role, responsibilities, restrictions and expectations; and
- (c) information concerning the physical, emotional and spiritual issues encountered by hospice patients and families.

(8) A hospice program must allow the patient and the patient's family to make the decision to participate in a hospice program and shall encourage the patient and the patient's family to assume as much responsibility for care as they choose.

(9) A hospice program must assure that all services identified in the hospice plan of care for a patient, including skilled nursing services, are offered to the patient.

(10) A hospice program must:

- (a) have a plan for providing bereavement follow up for families desiring it;
- (b) monitor and assess the quality of contract services;
- (c) ensure that hospice nursing emergency care is available on a 24-hour basis;
- (d) hire, train, and supervise hospice staff and ensure that hospice staff adhere to hospice policies; and
- (e) establish, update, and implement infection control policies and procedures that are sufficient to prevent transmission of disease. (History: Sec. 50-5-103 and 50-5-210, MCA; IMP, Sec. 50-5-103, 50-5-204 and 50-5-210, MCA; NEW, 1983 MAR p. 1460, Eff. 10/14/83; AMD, 1984 MAR p. 879, Eff. 6/1/84; AMD, 1994 MAR p. 2436, Eff. 8/26/94; TRANS, from DHES, 2002 MAR p. 185.)

Rules 02 through 04 reserved

37.106.2305 MINIMUM STANDARDS FOR AN INPATIENT HOSPICE FACILITY (1) In addition to complying with the standards contained in ARM 37.106.2301, an inpatient hospice facility must comply with the requirements of the conditions of participation for hospices providing inpatient care directly, as set forth in 42 CFR Part 418, subparts C through E. Those conditions of participation include, but are not limited to, requirements concerning the following:

- (a) 24-hour nursing service;
- (b) disaster preparedness;
- (c) health and safety laws;
- (d) fire protection;
- (e) fire protection waivers;
- (f) patient areas;
- (g) patient rooms and toilet facilities;
- (h) bathroom facilities;
- (i) linen;
- (j) isolation areas;
- (k) meal service, menu planning, and supervision; and
- (l) pharmaceutical hospice service.

(2) The department hereby adopts and incorporates by reference 42 CFR Part 418, subparts C through E, which contain the conditions that a hospice must meet in order to participate in the medicare program. A copy of the above conditions of participation may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103 and 50-5-210, MCA; IMP, Sec. 50-5-210, MCA; NEW, 1994 MAR p. 2436, Eff. 8/26/94; TRANS, from DHES, 2002 MAR p. 185.)

Rules 06 through 10 reserved

37.106.2311 MINIMUM STANDARDS FOR A RESIDENTIAL HOSPICE FACILITY (1) A residential hospice facility must meet all of the requirements contained in ARM 37.106.2301, in addition to those contained in this rule.

(2) A residential hospice facility must be managed directly by a licensed hospice program.

(3) A residential hospice facility must be staffed with qualified personnel in numbers sufficient to provide required core services and those indicated in each patient's hospice plan of care, including:

- (a) nursing services;
- (b) therapies;
- (c) monitoring of the ongoing medical needs of patients;
- (d) timely response to emergency situations;
- (e) volunteer services; and
- (f) recreational and social activities.

(4) A residential hospice must assure that individuals providing personal care to residential hospice patients have received, prior to delivering such care, documented training that includes the following elements, or the documented equivalent of such training:

- (a) hospice philosophy and orientation;
- (b) basic needs of the frail elderly and/or physically disabled persons;
- (c) first aid and handling emergencies;
- (d) basic techniques in observation of patient's mental and physical health;
- (e) basic personal care procedures, including grooming;
- (f) methods of making patients comfortable;
- (g) bowel and bladder care;
- (h) assisting patient mobility, including transfer (e.g. from bed to wheelchair);
- (i) techniques in lifting;
- (j) food and nutrition;
- (k) basic techniques of identifying and correcting potential safety hazards in the home; and
- (l) health oriented record keeping, including time/employment records.

(5) A residential hospice facility must meet the life-safety requirements set forth in chapters 22 and 23, Life Safety Code Handbook, National Fire Protection Association, 1994 Edition, for residential board and care occupancies.

- (6) In patient areas, a residential hospice must:
- (a) provide areas that ensure private patient and patient family visiting;
 - (b) provide or arrange for accommodations for family members to remain with the patient overnight;
 - (c) provide accommodations for family privacy after a patient's death;
 - (d) ensure that hospice visiting hours are flexible and that children or pets are not excluded;
 - (e) provide a handicapped accessible telephone for patient use;
 - (f) be equipped with furnishings which are home-like in design and function and contribute to a safe environment;
 - (g) provide one or more areas for dining, recreation and/or social activities, and refrain from utilizing these areas for corridor traffic.
- (7) In patient bedrooms, a residential hospice must:
- (a) allow each patient to bring personal items to locate in the patient's bedroom so long as the health and safety of any patient, patient's family members, or hospice staff are not jeopardized;
 - (b) allow no more than two beds per patient room and ensure that each patient bedroom is located at or above ground level, has a window to the outside of the facility, and has a direct entry from the corridor;
 - (c) provide at least 100 square feet in one-bed rooms and 80 square feet per bed in two-bed rooms, exclusive of closets, lockers, wardrobes, alcoves, or vestibules;
 - (d) provide each bedroom with a comfortable, appropriately sized bed for each occupant, equipped with a mattress protected by waterproof material, mattress pad, and comfortable pillow, as well as a comfortable chair and other furniture as appropriate to the decor and patient needs;
 - (e) provide a separate dresser and wardrobe or closet space for each occupant in a bedroom;
 - (f) provide clean, flame-resistant shades or the equivalent for every bedroom window;
 - (g) in each two-bed room, provide either flame-resistant cubicle curtains for each bed or movable flame-resistant screens to provide privacy upon request of a resident;
 - (h) if the needs of a patient require a call system or communication device to be in place, make it available; otherwise, the hospice may, but is not required to, provide a patient bedroom with a call system or communication device that is connected to an area in the hospice that is consistently staffed.

(8) A residential hospice must provide the following bathroom and toilet facilities:

(a) a toilet and lavatory in each toilet room and at least one toilet for every four patients;

(b) at least one bathing facility for every 12 patients;

(c) grab bars at each toilet, shower, and tub, with a minimum of 1-1/2 inch clearance between the bar and the wall and strength and anchorage sufficient to sustain a concentrated 250-pound load;

(d) at least one bathroom and one toilet accessible to individuals with mobility impairments;

(e) if the needs of a patient require a call system or communication device to be in place in the patient's bathroom, make it available; otherwise, the hospice may, but is not required to, provide a patient bathroom with a call system or communication device that is connected to an area in the hospice that is consistently staffed.

(9) A residential hospice must do the following for infection control:

(a) either be equipped to provide an isolation area for patients who have diseases with a high risk of transmission or have in place a method to ensure that such patients are transferred to a health care facility which is adequately equipped to admit such a patient;

(b) develop a procedure to monitor the infection control program on a regular basis;

(c) ensure that residents maintain an acceptable level of personal hygiene at all times.

(10) A residential hospice must meet the following meal service, menu planning, and supervision standards:

(a) Foods must be served in amounts and variety to meet the needs of each hospice patient.

(b) The hospice must provide a practical freedom-of-choice diet to patients and assure that patients' favorite foods are included in their diets whenever possible.

(c) The food service must establish and maintain standards relative to food sources, refrigeration, refuse handling, pest control, storage, preparation, procuring, serving and handling that are sufficient to prevent food spoilage and transmission of infectious disease.

(d) A staff member trained or experienced in food management must be appointed to:

(i) provide diets as indicated on the plan of care for each patient; and

(ii) supervise meal preparation and service.

(e) If a hospice patient or patient's family wishes to provide meal services for an individual independent of the required food service of the hospice, either on a periodic or continuous basis, the hospice and patient, and patient's family when appropriate, must work out reasonable arrangements so that the hospice staff may plan accordingly.

(11) In order to provide pharmaceutical services to patients, a residential hospice must:

(a) Develop and maintain a system for the administration and provision of pharmaceutical services that are consistent with the drug therapy needs of the patient as determined by the hospice medical director and patient's primary physician.

(b) Ensure that medications ordered are consistent with the hospice philosophy which focuses on palliation, i.e., controlling pain and other symptoms which are manifested during the dying process and are consistent with professional practice and regulations of the Montana board of pharmacy.

(c) Ensure that all prescription medications are ordered in writing by someone licensed to write prescriptions under Montana state law, dispensed by a licensed pharmacy, received by the patient or the patient's family, and maintained in the hospice.

(d) Unless the pharmacy provides a unit dose system, ensure that all prescription drugs are labeled with a label that includes:

- (i) name of pharmacy;
- (ii) name of patient;
- (iii) name of prescribing physician;
- (iv) date prescription filled;
- (v) prescription number;
- (vi) name of medication;
- (vii) directions and dosage;
- (viii) expiration date; and
- (ix) quantity dispensed.

(e) Document all medication administration in the patient's record.

(f) Ensure that medications are administered only by one of the following individuals:

- (i) a licensed nurse, physician, or physician assistant;
- (ii) the patient or patient's family if the physician allows them to do so and an order acknowledging that fact is noted in the hospice care plan;

(iii) anyone authorized to administer medications by 37-8-103, MCA.

(g) Allow medications to be left at the bedside of a hospice patient when to do so is approved in the hospice plan of care, and, whenever such approval exists, provide for the storage of such medications in a safe and sanitary manner.

(h) Ensure that medications not stored at the bedside are maintained in locked storage in a central location in the hospice that is near or adjacent to an area for medication preparation and has appropriate refrigeration, a sink for handwashing, and locking cabinets.

(i) Destroy medications when the label is mutilated or indistinct, the medication is beyond the expiration or shelf life date, or unused portions remain due to discontinuance of use or death or discharge of the patient.

(j) Develop and follow written policies and procedures for destruction of legend drugs that include listing the type of drug(s) destroyed and the amount destroyed.

(12) The department hereby adopts and incorporates by reference chapters 22 and 23 of the Life Safety Code Handbook, National Fire Protection Association, 1994 Edition, which establishes building construction requirements for residential board and care occupancies. Copies of the above standards may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, MD 02269. (History: Sec. 50-5-103 and 50-5-210, MCA; IMP, Sec. 50-5-210, MCA; NEW, 1994 MAR p. 2436, Eff. 8/26/94; AMD, 1995 MAR p. 851, Eff. 5/12/95; TRANS, from DHES, 2002 MAR p. 185.)

Subchapter 24

Home Infusion Therapy

37.106.2401 HOME INFUSION THERAPY: DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) "Antineoplastic" means a pharmaceutical that has the capability of killing malignant cells.

(2) "Biological safety cabinet" means a containment unit suitable for the preparation of low to moderate risk agents where there is a need, according to national sanitation foundation standard 49 for class II biohazard cabinetry, as revised May 1992, for protection of the product, personnel, and environment. The department hereby adopts and incorporates by reference national sanitation foundation standard 49 for class II biohazard cabinetry, as revised May 1992, promulgated by the National Sanitation Foundation International, 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48113. A copy of national sanitation foundation standard 49 may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(3) "Class 100 environment" means an atmospheric environment which contains less than 100 particles 0.5 microns in diameter per cubic foot of air.

(4) "Critical area" means an area where sterilized products or containers are exposed to the environment during aseptic preparation.

(5) "Enteral" means a preparation compounded in a class 100 environment and dispensed by a pharmacist and administered within or by way of the intestine.

(6) "Licensed health care professional" means a physician (M.D. or D.O.), a physician assistant-certified, a nurse practitioner, or a registered nurse practicing within the scope of their license.

(7) "Parenteral" means a sterile preparation of drugs for injection through one or more layers of the skin with infusion administration time equal to or greater than 15 minutes.

(8) "Pharmacist" means a natural person licensed by the Montana department of labor and industry to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons and who may affix to the person's name the term "R.Ph."

(9) "Pharmacist-in-charge" means a pharmacist licensed by the Montana department of labor and industry who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs, and who is personally in full and actual charge of such pharmacy.

(10) "Pharmacy" means an established place registered by the Montana department of labor and industry in which prescriptions, drugs requiring a prescription, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold.

(11) "Prescribing practitioner" means a practitioner authorized to prescribe by the jurisdiction in which he or she is licensed to practice the profession and acting with the scope of this authorization.

(12) "Sterile pharmaceutical or product" means a dosage form free from living micro-organisms (aseptic). (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

Rules 02 and 03 reserved

37.106.2404 HOME INFUSION THERAPY: RESPONSIBILITY FOR SERVICES (1) Where a home infusion therapy agency directly provides either the home infusion therapy services or skilled nursing services and arranges for the provision of the other services, the parties must enter into a written contract defining the nature and scope of the services to be provided by each party. The contract must:

- (a) describe the services to be provided by each party;
- (b) specify the responsibilities of each of the parties in the provision, coordination, supervision, and evaluation of the care or services provided; and
- (c) specify the role of the parties in:
 - (i) the patient admission process;
 - (ii) the patient assessment process;
 - (iii) the patient education process;
 - (iv) the development, review, and revision of the plan of care;
 - (v) the development, review, and revision of the patient home care record;
 - (vi) the provision of clinical services;
 - (vii) the patient care conferences; and
 - (viii) discharge planning. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2405 HOME INFUSION THERAPY: ADMINISTRATOR

(1) Each home infusion therapy agency must employ an administrator who shall:

(a) organize and direct the home infusion therapy agency's ongoing functions;

(b) be responsible for ongoing oversight of the agency's quality assessment system, including the establishment of policies and procedures which address the safe control, accountability and distribution of infusion products;

(c) employ qualified personnel and ensure adequate staff education and evaluation; and

(d) be familiar with and assure compliance with the rules of this subchapter.

(2) For a pharmacy which is licensed as a home infusion therapy agency, the pharmacist-in-charge may be the administrator. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2406 HOME INFUSION THERAPY: CLINICAL SERVICES

(1) Each home infusion therapy agency shall:

(a) provide clinical and laboratory data concerning each patient to any contracted party providing services to the patient;

(b) report, in a timely manner, any abnormal values to the prescribing practitioner and any contracted party providing services to the patient; and

(c) ensure that each patient complies with and adheres to the home infusion regimen.

(2) Each home infusion therapy agency, and any contracted party providing services to the patient, together, shall:

(a) design, document and follow a systematic process of medication use review on an ongoing basis;

(b) prepare and document a medication profile;

(c) monitor and assess each patient's ongoing drug therapy and at a minimum, document for each patient:

(i) the initial assessment, including appropriateness of the dose, frequency, route of administration, and relevant medical history;

(ii) the clinical progress notes and on-call and after hours activity;

(iii) the drug stability, and osmolarity and compatibility, when appropriate;

(iv) the clinical laboratory or clinical monitoring methods to detect side effects, toxicity, or adverse effects and whether the findings have been reported to the pharmacist and prescribing practitioner;

(v) the monthly clinical therapy summary for any patient receiving services 30 days or longer; and

(vi) the discharge summary of therapy at the end of treatment.

(3) The licensed health care professional providing skilled nursing services shall:

(a) provide those services in accordance with the plan of care;

(b) dictate or write clinical notes at the time of service. Clinical notes must be signed, recorded and incorporated into the patient's home care record within three working days of providing the service;

(c) assist in coordinating all services provided; and

(d) notify the pharmacist, the prescribing practitioner, and the home infusion therapy agency's personnel responsible for the care of the patient, of any significant changes in the patient's condition.

(4) Any sterile product administered for the first time must be administered under the supervision of a licensed health care professional to detect, monitor, and respond to adverse drug reactions. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2407 HOME INFUSION THERAPY: QUALITY ASSESSMENT

(1) Each home infusion therapy agency, in consultation with any contracted parties, if applicable, shall develop and implement a system of reviewing and evaluating the appropriateness and effectiveness of patient services and the correction of deficiencies. At a minimum, the quality assessment system must:

(a) consist of an annual review of overall provider functions and a semiannual review of selected patient clinical records; and

(b) be reviewed and evaluated by a team composed of, at a minimum, a pharmacist-in-charge, a licensed health care professional, and a licensed health care professional not affiliated with the home infusion therapy agency. The evaluation will be ongoing, including sampling not initiated solely in response to a problem.

(2) The annual review of provider function must be an organized, effective and documented evaluation. At a minimum, the evaluation must include a review of the:

- (a) administrative policies and procedures;
- (b) personnel policies;
- (c) safety management;
- (d) emergency preparedness policies;
- (e) clinical program policies and procedures; and
- (f) durable medical equipment maintenance and procedures.

(3) The semiannual review of patient clinical records must be:

- (a) both concurrent and retrospective; and
- (b) performed against preset criteria of practice for each discipline providing care. Criteria of practice must include:
 - (i) the appropriateness of the level of care provided to protect the health and safety of patients;
 - (ii) the timeliness of the provision of care;
 - (iii) the adequacy of the care to meet the patient's needs; and
 - (iv) the appropriateness of the specific services provided.

(4) Each home infusion therapy agency, in consultation with any contracted parties, if applicable, shall develop and implement a quality assessment plan. The plan must include:

(a) a method for reporting results and a mechanism for taking follow up action;

(b) patient and caregiver and licensed health care professional satisfaction surveys; and

(c) methods to document medication errors and incident reporting and adverse drug reactions.

(5) Each home infusion therapy agency, in consultation with any contracted parties, if applicable, shall establish, document, and audit at regular, planned intervals, quality control procedures. Quality control procedures must be evaluated on an ongoing basis. At a minimum, quality control procedures must include:

(a) drug or product recall procedures;

(b) documentation of storage, stability, and expiration dates;

(c) documentation of equipment functioning and maintenance (such as daily refrigerator temperature logs, records for cleaning, maintenance and calibration of infusion devices);

(d) certification of laminar flow hoods and biological safety cabinets by an independent contractor, according to national sanitation foundation standard 49, for operational efficiency at least every 12 months. Appropriate records must be maintained to document certification;

(e) documentation of assessment of sterile technique performed by pharmacy personnel; and

(f) procedures for suspected microbial contamination of sterile products. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

Rules 08 through 10 reserved

37.106.2411 HOME INFUSION THERAPY: EDUCATION SERVICES

(1) Each home infusion therapy agency, and any contracted party providing services to the patient, together, shall:

(a) provide the patient or the patient's caregiver with education and counseling on proper storage, scheduling, and risks associated with specific drugs and infusion therapy in general, and document the counseling sessions in the patient's home care record; and

(b) reassess on an ongoing basis, the patient's competency or the patient's caregiver's competency, in managing home infusion therapy in the home environment and document the reassessment process in the patient's home care record.

(History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2412 HOME INFUSION THERAPY: HOME CARE RECORD

(1) Each home infusion therapy agency, and any contracted party providing services to the patient, together, shall establish and maintain for each patient accepted for care, a home care record which must include the following information:

- (a) admission data, including the:
 - (i) name;
 - (ii) current address;
 - (iii) date of birth;
 - (iv) sex;
 - (v) date of admission;
 - (vi) name, address and telephone number of the patient's caregiver or family member;
 - (vii) name, address and telephone number of the pharmacist-in-charge and the prescribing practitioner; and
 - (viii) admission diagnosis or pertinent health information.

(b) a notation of patient conditions and diagnoses which are relevant to the plan of care;

(c) any allergies and known adverse reactions to drugs and food. This information must be given such prominence in the record so as to make it obvious to any persons who provide food or medication to the patient;

(d) laboratory reports, if applicable; and

(e) documentation that a list of patient rights and responsibilities have been made available to each patient or the patient's caregiver.

(2) The responsibilities of the patient, the home infusion therapy agency, including any contracted parties, and the prescribing practitioner, in the areas of delivery of care and monitoring of the patient, must be clearly documented in the patient's home care record.

(3) The home infusion therapy agency, and any contracted party providing services to the patient, together, shall develop a plan of care within three working days of the initiation of therapy, which must include:

- (a) a diagnosis;
- (b) the types of services and equipment required;
- (c) the access device and route of administration;
- (d) the estimated length of service;
- (e) a statement of treatment goals;
- (f) the regimen and prescription ordered;
- (g) the concurrent legend and over the counter drugs;
- (h) an assessment of mental status;
- (i) permitted activities;
- (j) the prognosis, discharge, transfer or referral plan;

and

(k) instructions to patient and family. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

Rules 13 and 14 reserved

37.106.2415 HOME INFUSION THERAPY: ADMINISTRATION OF MEDICATION AND TREATMENT (1) All medications and treatments administered by the home infusion therapy agency's personnel or contracted parties must be administered by licensed health care professionals. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2416 HOME INFUSION THERAPY: PARENTERAL OR ENTERAL SOLUTIONS (1) In addition to the minimum requirements for a pharmacist and a pharmacy established by Title 37, chapter 7, MCA, and ARM Title 24, chapter 174, any parenteral or enteral solution provided by the home infusion therapy agency or obtained through contract with a third party pharmacy and provided to patients of the home infusion therapy agency must be dispensed by a licensed pharmacist in a licensed pharmacy, whom and which are in compliance with the requirements of ARM 37.106.2420, 37.106.2422, 37.106.2423, 37.106.2426, 37.106.2430 through 37.106.2433 in this subchapter. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

Rules 17 through 19 reserved

37.106.2420 HOME INFUSION THERAPY: PHARMACY POLICY AND PROCEDURE MANUAL (1) The pharmacy shall develop a policy and procedure manual relating to sterile products and home infusion therapy. The manual must be available for inspection at the pharmacy.

(2) The pharmacist-in-charge shall review and revise the manual on an annual basis.

(3) The manual must specifically detail the storage, stability, handling, compounding, labeling, dispensing and delivery of all sterile pharmaceuticals and address requirements relating to:

(a) security measures, which ensure that the premises where sterile pharmaceuticals are present are secured, and which prevent access to patient records by unauthorized personnel;

(b) sanitation, including the methodology of cleaning biological safety cabinets and laminar flow hoods, and of inspecting filters for deterioration and microbial contamination;

(c) the annual certification of safety cabinets and laminar floor hoods;

(d) the orientation of personnel;

(e) the duties and qualifications of staff;

(f) record keeping requirements;

(g) medication profiles;

(h) the administration of parenteral therapy to include infusion devices, drug delivery systems and first dose monitoring;

(i) the pharmacy patient evaluation and documentation;

(j) prescription processing;

(k) clinical services;

(l) drug and product selection;

(m) 24 hour emergency access to a pharmacist;

(n) the handling of antineoplastic agents;

(o) drug destruction, returns, and proper waste management;

(p) equipment management, including tracking, cleaning, and testing of infusion pumps;

(q) end product testing;

(r) a quality assessment program;

- (s) a risk management program including incident reports, adverse drug reactions, product contamination, and drug recalls;
- (t) education and training of the patient or the patient's caregiver;
- (u) emergency drug and supply procurement;
- (v) guidelines for handling investigational drug administration;
- (w) reference materials; and
- (x) an emergency preparedness plan. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

Rule 21 reserved

37.106.2422 HOME INFUSION THERAPY: PHYSICAL REQUIREMENTS FOR PHARMACIES

(1) The pharmacy must have a designated area with entry restricted to designated personnel for preparing sterile products. This area must be:

(a) a separate room with a closed door, isolated from other areas with restricted entry or access, and designed to avoid unnecessary traffic and airflow disturbances from activity within the controlled facility;

(b) used only for the preparation of sterile pharmaceuticals;

(c) of sufficient size to accommodate a laminar airflow hood and to provide for the proper storage of drugs and supplies under appropriate conditions of temperature, light, moisture, sanitation, ventilation, and security; and

(d) one with cleanable work surfaces, walls and floors.

(2) The pharmacy preparing the sterile products must have:

(a) appropriate environmental control devices capable of maintaining at least a class 100 environment in the workplace where critical activities are performed. The devices must be capable of maintaining class 100 conditions during normal activity. Examples of appropriate devices include laminar airflow hoods and zonal laminar flow of high efficiency particulate air filtered air;

(b) appropriate disposal containers for used needles, syringes, etc., and if applicable, for antineoplastic waste from the preparation of antineoplastic agents and infectious wastes from patients' homes;

(c) appropriate biohazard cabinetry when antineoplastic drug products are prepared;

(d) temperature controlled delivery containers, when appropriate;

(e) infusion devices, when appropriate;

(f) a sink with hot and cold running water which is convenient to compounding area for the purpose of hand scrubs prior to compounding; and

(g) a refrigerator/freezer with a thermometer.

(3) The pharmacy shall maintain supplies and provide attire adequate to maintain an environment suitable for the aseptic preparation of sterile products.

(4) The pharmacy shall maintain sufficient current reference materials relating to sterile products to meet the needs of the pharmacy personnel. Reference materials must contain information on stability, incompatibilities, mixing guidelines, and the handling of antineoplastic products. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2423 HOME INFUSION THERAPY: DISPENSING OF STERILE PHARMACEUTICALS (1) The pharmacy shall maintain a record of each sterile pharmaceutical dispensed for at least two years after the last dispensing activity. This record must include, but not be limited to:

- (a) the products and quantity dispensed;
- (b) the date dispensed;
- (c) the prescription identifying number;
- (d) the directions for use;
- (e) the identification of the dispensing pharmacist and preparing pharmacy technician, if appropriate;
- (f) the manufacturer lot number and expiration date, stability date (or recall policy if the lot number is not recorded);
- (g) the compounding or special instructions, if applicable; and
- (h) the next scheduled delivery date.

(2) All records of dispensed sterile pharmaceuticals must be made a part of the patient's home care record. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

Rules 24 and 25 reserved

37.106.2426 HOME INFUSION THERAPY: PHARMACY PERSONNEL

(1) The pharmacist-in-charge must be trained in the specialized functions of preparing and dispensing compounded sterile products, including the principles of aseptic technique and quality assurance. This training may be obtained through residency training programs, continuing education programs, or experience in an intravenous admixture facility.

(2) The pharmacist-in-charge shall be responsible for:

(a) the purchasing, storage, compounding, repackaging, dispensing, and distribution of all sterile products;

(b) the development and continuing review of all policies and procedures, training manuals, and quality assessment programs;

(c) providing written education material to the patient or the patient's caregiver, with respect to:

(i) drug information sheets for prescribed therapy;

(ii) compounding, admix technique, adding medications to solutions, withdrawing medications from vials, etc.;

(iii) function, operation, and troubleshooting durable medical equipment when prescribed; and

(iv) supplies and training for safe and proper handling and disposal of antineoplastic, infectious, and hazardous waste.

(d) All written education material provided to the patient or the patient's caregiver must be made a part of the patient's home care record.

(3) For each pharmacy, a pharmacist must be accessible by phone and able to dispense, if necessary, and to respond to patients' and other health professionals' questions and needs, 24 hours per day, seven days per week.

(4) The pharmacist-in-charge may be assisted by supportive personnel. These personnel must have specialized training in the field of home infusion therapy, and must work under the immediate supervision of a licensed pharmacist. The training provided to these personnel must be described in writing in a training manual. The duties and responsibilities of these personnel must be consistent with their training and experience.

(5) Pharmacy personnel shall document orientation procedures, competency assessments, and continuing education of professional and nonprofessional staff. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

Rules 27 through 29 reserved

37.106.2430 HOME INFUSION THERAPY: LABELING

(1) Parenteral pharmaceuticals dispensed to patients must have a permanent label with the following information:

(a) the name, address, and phone number of the pharmacy including a phone number which provides access to a pharmacist 24 hours per day, seven days per week;

(b) the date the product was prepared;

(c) the prescription identifying number;

(d) the patient's full name;

(e) the name of the prescribing practitioner;

(f) the directions for use including infusion rate and infusion device, if applicable;

(g) the name of each component, its strength and amount;

(h) the expiration date of the product based on published data;

(i) the appropriate ancillary instructions such as storage instructions or cautionary statements including antineoplastic warning when applicable; and

(j) the identity of the pharmacist compounding and dispensing the product. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2431 HOME INFUSION THERAPY: ANTINEOPLASTIC DRUGS

(1) The following requirements must be met by those pharmacies that prepare antineoplastic drugs to ensure the protection of the personnel involved:

(a) All antineoplastic drugs must be compounded in a vertical flow, Class II, biological safety cabinet;

(b) Protective apparel must be worn by personnel compounding antineoplastic drugs. This must include gloves, gowns with tight cuffs, and appropriate equipment as necessary;

(c) Appropriate safety and containment techniques for compounding antineoplastic drugs must be used in conjunction with the aseptic techniques required for preparing sterile pharmaceuticals;

(d) Written procedures for handling both major and minor spills of antineoplastic agents must be included in the policy and procedure manual; and

(e) Prepared doses of antineoplastic drugs must be dispensed, labeled with proper precautions inside and outside, and shipped in a manner to minimize the risk of accidental rupture of the primary container. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2432 HOME INFUSION THERAPY: DISPOSAL OF ANTINEOPLASTIC, INFECTIOUS, AND HAZARDOUS WASTES (1) Disposal of antineoplastic, infectious and hazardous waste is governed by the Infectious Waste Management Act, Title 75, chapter 10, part 10, MCA. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2433 HOME INFUSION THERAPY: DELIVERY OF MEDICATIONS (1) The pharmacist-in-charge shall ensure that medications are timely delivered so that the prescription for sterile pharmaceuticals can be implemented without undue delay. Once therapy has been initiated, the pharmacy shall continue to provide sterile pharmaceuticals in a timely fashion so as not to interrupt ongoing therapy.

(2) The pharmacist-in-charge shall ensure the environmental control of all products shipped. All compounded, sterile pharmaceuticals must be shipped or delivered, other than those compounded in an institutional setting, to a patient in appropriate, temperature-controlled (as defined by the United States Pharmacopeia/National Formulary) delivery containers and stored appropriately in the patient's therapy setting.

(3) Patients must be notified in advance of delivery of the products. Patients must be provided with a receipt for all sterile products and supplies delivered to them.

(4) The pharmacy shall document a chain of possession for all controlled substances. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-213, MCA; NEW, 1996 MAR p. 2587, Eff. 10/4/96; TRANS, from DHES, 2002 MAR p. 185.)

Subchapter 25

Retirement Homes

37.106.2501 RETIREMENT HOMES: DEFINITIONS In addition to those definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) "Bedding" means mattresses, box springs, mattress covers, mattress pads, sheets, pillow slips, pillows, pillow covers, blankets, comforters, quilts and bedspreads.

(2) "Building authority" means the building codes bureau, Montana department of labor and industry, or a local government building inspector enforcing a local building code enforcement program certified by the department of labor and industry.

(3) "Fire authority" means the state fire marshal or the state fire marshal's authorized agent.

(4) "Fixtures" means a shower, bathtub, toilet, toilet seat, urinal, lavatory, kitchen sink, janitor and custodial sink, utensil sink and all exposed plumbing integral to them.

(5) "Floors" means sub-flooring and floor coverings of all rooms including stairways, hallways, and lobbies.

(6) "Furnishings" includes, but is not limited to, cups, glasses, pitchers, utensils, draperies, curtains, blinds, light fixtures, lamps and lamp shades, chairs, tables, desks, shelves, books, magazines, bookcases, dressers, bedsteads, mattress springs other than box springs, towels, wash cloths, soap, toilet tissue, radios, television sets, coffee makers, water heaters, pictures, mirrors, cabinets, closets and refrigerators.

(History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-214, MCA; NEW, 1996 MAR p. 1867, Eff. 7/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2502 RETIREMENT HOMES: APPLICATION OF OTHER RULES

(1) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapters 3, 4, 6, 10, 11, 14, 15, 22 and 23, conflict with the terms of this subchapter, the terms of this subchapter will apply to retirement homes. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-214, MCA; NEW, 1996 MAR p. 1867, Eff. 7/4/96; TRANS, from DHES, 2002 MAR p. 185.)

Rules 03 and 04 reserved

37.106.2505 RETIREMENT HOMES: FIRE AND BUILDING CODES APPROVAL (1) The construction of or alteration, addition, or renovation to a retirement home must:

(a) meet all applicable local and state building and fire codes;

(b) be approved in writing by the building authority; and

(c) be approved in writing by the fire authority.

(2) A retirement home must be inspected and certified on an annual basis for compliance with the local and state fire codes by the fire authority. A retirement home must maintain a record of such inspection and certification for at least one year following the date of the inspection. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-214, MCA; NEW, 1996 MAR p. 1867, Eff. 7/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2506 RETIREMENT HOMES: SWIMMING POOLS AND SPAS

(1) The construction and operation of any swimming area, swimming pool, hot springs pool, or spa which serves a retirement home must comply with the licensing procedures and requirements of Title 50, chapter 53, MCA, and ARM Title 37, chapter 111, subchapters 10 and 11. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-214, MCA; NEW, 1996 MAR p. 1867, Eff. 7/4/96; TRANS, from DHES, 2002 MAR p. 185.)

Rules 07 through 09 reserved

37.106.2510 RETIREMENT HOMES: PHYSICAL REQUIREMENTS

(1) A retirement home must comply with the local and state building code and fire code.

(2) A retirement home must comply with the following physical requirements:

(a) There must be adequate and convenient janitorial facilities including a sink and storage area for equipment and chemicals.

(b) Floors and walls in toilet and bathing rooms, laundries, janitorial closets, and other rooms subject to large amounts of moisture, must be smooth and non-absorbent.

(c) The floor mounted and wall mounted furnishings must be easily moveable to allow for cleaning or mounted in such a manner as to allow for cleaning around and under such furnishings.

(d) Bathing facilities must be equipped with:

(i) anti-slip surfaces; and

(ii) handicapped grab bars, capable of supporting a concentrated load of 250 pounds.

(3) Each bedroom in a retirement home must include:

(a) floor to ceiling walls;

(b) one door which can be closed to allow privacy for residents;

(c) at least one operable window; and

(d) access to a toilet room without entering through another resident's room.

(4) If a retirement home elects to provide furnishings as part of its services, the retirement home must provide in each bedroom an adequate closet or wardrobe, bureau or dresser or its equivalent, and at least one arm chair, for every two residents.

(5) Traffic to and from any room shall not be through a resident's bedroom.

(6) No occupied room shall have as its means of access a trap door, ladder, or folding stairs.

(7) No required path of travel to the outside shall be through rooms that are subject to locking or otherwise controlled by a person other than the person seeking to escape.

(8) No more than four residents may reside in a single bedroom.

(9) Exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, each single bedroom must contain at least 100 square feet, and each multi-bedroom must contain at least 80 square feet per bed.

(10) With respect to any conditions in existence prior to July 4, 1996, any requirement of ARM 37.106.2510 may be waived at the discretion of the department if:

(a) physical limitations of the retirement home would require disproportionate expense or effort to comply with a requirement, with little or no increase in the level of safety to the residents and staff; or

(b) compliance with a requirement would involve unreasonable hardship or unnecessary inconvenience, with little or no increase in the level of safety to the residents and staff.

(11) With respect to any conditions in existence prior to July 4, 1996, the specific requirements of ARM 37.106.2510 may be modified by the department to allow alternative arrangements that will provide the same level of safety to the residents and staff, but in no case shall the modification afford less safety than that which, in the discretion of the department, would be provided by compliance with the corresponding requirement in ARM 37.106.2510. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-214, MCA; NEW, 1996 MAR p. 1867, Eff. 7/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2511 RETIREMENT HOMES: ENVIRONMENTAL CONTROL

(1) Hand cleansing soap or detergent and individual towels must be available at each sink in food preparation areas and commonly shared areas of the facility. Towels for common use are not permitted.

(2) A waste receptacle must be located near each sink.

(3) A minimum of 10 foot-candles of light must be available in all rooms, with the following exceptions:

(a) All reading lamps must have a capacity to provide a minimum of 30 foot-candles of light;

(b) All toilet and bathing areas must be provided with a minimum of 30 foot-candles of light;

(c) General lighting in food preparation areas must be a minimum of 30 foot-candles of light; and

(d) Hallways must be illuminated at all times by at least a minimum of five foot-candles of light at the floor. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-214, MCA; NEW, 1996 MAR p. 1867, Eff. 7/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2512 RETIREMENT HOMES: WATER SUPPLY SYSTEM

(1) The department hereby adopts and incorporates by reference ARM 17.38.207, stating maximum microbiological contaminant levels for public water supply systems, and the following circulars establishing construction, operation, and maintenance standards for spring, surface water, wells and cisterns:

(a) Circular WQB-1 entitled "Montana Department of Health and Environmental Sciences Standards for Water Works" (1992 Edition);

(b) Circular WQB-3 entitled "Montana Department of Health and Environmental Sciences Standards for Small Water Systems" (1992 Edition);

(c) Circular #17 entitled "Cisterns for Water Supplies." Copies of ARM 17.38.207 and circulars WQB-1, WQB-3 and #17 may be obtained from the Water Quality Bureau (WQB), Department of Environmental Quality (DEQ), Metcalf Building, 1520 East 6th Avenue, P.O. Box 200901, Helena, MT 59620-0901.

(2) A retirement home must provide an adequate and potable supply of water. The retirement home must:

(a) connect to a public water supply system approved by the department of environmental quality; or

(b) if the retirement home is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including guests, staff, and residents, and an adequate public water supply system is not accessible, utilize a nonpublic system whose construction and operation meet those standards established in one of the following circulars:

(i) Circular WQB-1 entitled "Montana Department of Health and Environmental Sciences Standards for Water Works" (1992 Edition);

(ii) Circular WQB-3 entitled "Montana Department of Health and Environmental Sciences Standards for Small Water Systems" (1992 Edition);

(iii) Circular #17 entitled "Cisterns for Water Supplies."

(3) If a nonpublic water supply system is used in accordance with (2) (b), a retirement home must:

(a) submit a water sample at least quarterly to a laboratory licensed by the department of environmental quality to perform microbiological analysis of water supplies in order to determine that the water does not exceed the maximum microbiological contaminant levels stated in ARM 17.38.207.

(4) A retirement home must replace or repair the water supply system serving it whenever the water supply:

(a) contains microbiological contaminants in excess of the maximum levels contained in ARM 17.38.207; or

(b) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water-carried waste disposal.

(5) Handsinks and bathing facilities must be provided with water at a temperature of at least 100°F and not more than 120°F.

(6) Ice must be:

(a) obtained from a licensed supplier if it is not made from the retirement home's water supply;

(b) manufactured, stored, handled, transported and served in a manner which is approved by the department or local health authority as preventing contamination of the ice.

(7) Where open bin ice storage is provided, an ice scoop must be readily available for use by residents or the management and stored either inside the bin or in a closed container protected from contamination.

(8) Ice storage bins may not be connected directly to any trap, drain, receptacle sink or sewer which discharges waste or to any other source of contamination. A minimum of a four inches air gap is required between the ice storage bin drain and any waste discharge. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-214, MCA; NEW, 1996 MAR p. 1867, Eff. 7/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2513 RETIREMENT HOMES: SEWAGE SYSTEM (1) The department hereby adopts and incorporates by reference ARM Title 17, chapter 36, subchapter 9, on site subsurface wastewater treatment systems. A copy of ARM Title 17, chapter 36, subchapter 9 may be obtained from the Department of Environmental Quality, Permitting and Compliance Division, 1520 East 6th Avenue, P.O. Box 200901, Helena, MT 59620-0901.

(2) In order to ensure sewage is safely and completely disposed of, a retirement home must:

(a) connect to a public water supply system approved by the department of environmental quality; or

(b) if the retirement home is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including guests, staff, and residents, and an adequate public sewage system is not available, utilize a nonpublic system whose construction and use meet the construction and operation standards in ARM Title 17, chapter 36, subchapter 9;

(c) replace or repair a failed system as defined by ARM 17.36.903(6). (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-214, MCA; NEW, 1996 MAR p. 1867, Eff. 7/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2514 RETIREMENT HOMES: SOLID WASTE (1) In order to ensure that solid waste is safely stored and disposed of, a retirement home must:

(a) store all solid waste between collections in containers which have lids and are corrosion resistant, flytight, watertight, and rodent proof;

(b) utilize exterior collection stands for the storage containers, which prevent them from being tipped, protect them from deterioration, and allow easy cleaning below and around them;

(c) clean all solid waste containers frequently; and

(d) transport or utilize a private or municipal hauler to transport the solid waste at least weekly to an approved landfill site in a covered vehicle or in covered containers.

(History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-214, MCA; NEW, 1996 MAR p. 1867, Eff. 7/4/96; TRANS, from DHES, 2002 MAR p. 185.)

Rules 15 through 19 reserved

37.106.2520 RETIREMENT HOMES: LAUNDRY FACILITIES

(1) Laundry facilities utilized by a retirement home for laundering of its soiled laundry, including but not limited to bed linen, towels and washcloths, must be provided with:

(a) a mechanical washer and hot air tumble dryer. Manual washing and line drying of bed linen, towels and washcloths is prohibited. Dryers must be properly vented to prevent maintenance problems;

(b) a hot water supply system capable of supplying water at a temperature of 54°C (130°F) to the washer during all periods of use, or if a temperature of 54°C (130°F) cannot be attained or maintained, manufacturer documentation showing the cleansing products effectiveness at lower water temperatures by exponentially increasing the time laundry is exposed to the product;

(c) a separate area for sorting and storing soiled laundry and folding and storing clean laundry;

(d) separate carts for transporting soiled and cleaned laundry; and

(e) hand washing facilities including a sink, soap, and disposable towels. A soak sink may double as a handwashing sink.

(2) Sheets, pillow covers, towels and washcloths must be dried in a hot air tumble dryer or ironed at a minimum temperature of 150°C (300°F).

(3) Facility staff handling laundry must cover their clothes while working with soiled laundry, use separate clean covering for their clothes while handling clean laundry, and wash their hands both after working with soiled laundry and before they handle clean laundry.

(4) The provisions of ARM 37.106.2520 do not apply to laundry facilities provided by the retirement home for the personal use of its residents. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-214, MCA; NEW, 1996 MAR p. 1867, Eff. 7/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2521 RETIREMENT HOMES: HOUSEKEEPING AND
MAINTENANCE

(1) A retirement home must provide maintenance services. With respect to the provision of maintenance services, and housekeeping services, where a retirement home elects to provide those services to individual residents within their rooms, the retirement home must ensure that:

(a) each janitor room is clean, ventilated and free from odors;

(b) mop heads, when used, are changed frequently using laundered replacements;

(c) toilets, bathtubs, lavatories, and showers are not used for washing and rinsing of mops, brooms, brushes, or any other cleaning devices;

(d) the transporting, handling and storage of clean bedding, where provided by the retirement home, is performed in such a manner as to preclude contamination by soiled bedding or from other sources;

(e) any cleaner used in cleaning bathtubs, showers, lavatories, urinals, toilet bowls, toilet seats, and floors contains fungicides or germicides;

(f) deodorizers and odor-masking agents are not used unless the room in which the agent is used is clean to sight and touch;

(g) cleaning devices used for lavatories, showers and bathtubs are not used for any other purpose;

(h) dry dust mops and dry dust cloths are not used for cleaning purposes. Dusting and cleaning must be accomplished using treated mops, wet mops, treated cloths, or moist cloths to prevent the spread of soil from one place to another;

(i) the retirement home is free of insects, rodents and other vermin;

(j) all bedding, towels, and wash cloths, where provided by the retirement home, are clean and in good repair. Bedding, towels, and wash cloths, where provided by the retirement home, must be made available to each resident on a daily or weekly basis;

(k) all furnishings, where provided by the retirement home, fixtures, floors, walls, and ceilings are clean and in good repair;

(l) cleaning compounds and pesticides are stored, used, and disposed of in accordance with the manufacturer's instructions;

(m) glasses, pitchers, ice buckets, and other utensils used for food or drink and provided in units for use by residents are not washed or sanitized in any lavatory or janitor sink. Approved facilities for washing, rinsing, and sanitizing glasses, pitchers, ice buckets, and other utensils must be provided by the retirement home. In the absence of approved washing facilities, single service utensils must be used; and

(n) all utensils used for food or drink and provided in units for use by residents are stored, handled, and dispensed in a manner which precludes contamination of the utensil prior to use by a resident. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-214, MCA; NEW, 1996 MAR p. 1867, Eff. 7/4/96; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2522 RETIREMENT HOMES: FOOD SERVICE REQUIREMENTS

(1) The department hereby adopts and incorporates by reference ARM Title 37, chapter 110, subchapter 2 which sets sanitation and food handling standards for food service establishments. A copy of ARM Title 37, chapter 110, subchapter 2 may be obtained from the Department of Public and Human Services, Health Policy Services Division, Communicable Disease Control and Prevention Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) Where a food service is operated as an integral part of a retirement home, compliance with ARM Title 37, chapter 110, subchapter 2, is required.

(3) If the food service is available only to residents and staff of the retirement home, licensure as a food service establishment is not required, but compliance with ARM Title 37, chapter 110, subchapter 2, is required. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-214, MCA; NEW, 1996 MAR p. 1867, Eff. 7/4/96; TRANS, from DHES, 2002 MAR p. 185.)

Rules 23 through 29 reserved

37.106.2530 RETIREMENT HOMES: RESIDENT REGISTER (1) A retirement home must maintain a register of all residents currently residing at the retirement home, noting for each resident, at a minimum, the resident's name and:

- (a) room or apartment number;
- (b) date of arrival; and
- (c) date of departure.

(2) The register must be kept on the retirement home premises and be available for review and verification by the department during inspections. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103 and 50-5-214, MCA; NEW, 1996 MAR p. 1867, Eff. 7/4/96; TRANS, from DHES, 2002 MAR p. 185.)

Subchapter 26

Adult Day Care

37.106.2601 APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapter 3 conflict with the terms of ARM Title 37, chapter 106, subchapter 26, the terms of subchapter 26 will apply to adult day care centers. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1995 MAR p. 853, Eff. 5/12/95; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2602 GENERAL SERVICES, ADMINISTRATION AND STAFFING

(1) An adult day care center shall provide the staff assistance to clients that each requires for activities of daily living, including but not limited to eating, walking, and grooming.

(2) If an adult day care center is operated on the premises of another licensed health care facility:

(a) the other facility may provide to day care clients any of the services for which the other facility is licensed, subject to the limitation that overnight service to a client may be provided for no more than seven successive nights;

(b) adequate facilities and staff must be provided to appropriately serve the clients of each licensed facility; and

(c) the center must identify, in writing, those personnel responsible for operating its programs.

(3) An adult day care center that is not operated on the premises of another licensed health care facility may not provide overnight service.

(4) The center must provide recreational and social activities for clients, post a calendar of those activities where clients can see it, and retain a copy of each calendar for at least one year after the date of the last event recorded on it.

(5) An adult day care center must provide an area in which clients desiring to do so may rest. A bed or lounge chair, as well as blankets and pillows, must be available and furnished to those who need them. If the center provides a bed or beds, it must:

(a) keep each bed dressed in clean bed linen in good condition;

(b) keep on hand a supply of clean bed linen sufficient to change beds often enough to keep them clean, dry, and free from odors; and

(c) provide each bed with a moisture-proof mattress or a moisture-proof mattress cover and mattress pad.

(6) There must be a written agreement between the center and each client or other person responsible for the client pertaining to cost of care, type of care, services to be provided, and the manner by which the responsible party will be notified of significant changes in the client's condition and the need to seek emergency care for the client.

(7) The family member or other person responsible for a client must be notified promptly if the client is removed from the center. A notation of the date of the contact and the person contacted must be made in the client's record.

(8) Each client must have access to a telephone at a convenient location within the center.

(9) The center shall make adequate provisions for identification of client's personal property and for safekeeping of valuables, including keeping an accounting of any personal funds handled for the client by the center.

(10) A client who is ambulatory only with mechanical assistance may only be kept on the ground floor of the center.

(11) Each adult day care center must employ a manager who must be in good physical and mental health, be of reputable and responsible moral character, and exhibit concern for the safety and well being of clients, and who:

(a) is at all times responsible for the center and ensures appropriate supervision of the clients;

(b) has completed high school or has a general education development (GED) certificate;

(c) has knowledge of and the ability to conform to the applicable laws and rules governing adult day care centers; and

(12) The owner of an adult day care center who meets the qualifications listed in (11) above may serve as the manager.

(13) The manager must:

(a) oversee the day to day operation of the center, including, but not limited to:

(i) services to clients;

(ii) record keeping; and

(iii) employing, training and/or supervising employees.

(b) protect the safety of clients;

(c) be familiar with and assure compliance with the department's standards and rules relating to adult day care;

(d) post the current license at all times at a place in the center that is conspicuous to the public;

(e) provide documented orientation to all employees that includes information on the following:

- (i) an overview of the center's policies and procedures manual and a presentation regarding how the policies and procedures are to be used and implemented;
- (ii) a review of the employee's job description;
- (iii) services provided by the facility;
- (iv) simulated fire prevention, evacuation, and disaster drills;
- (v) basic techniques of identifying and correcting potential safety hazards in the facility; and
- (vi) emergency procedures, such as basic first aid.
- (f) review every accident and/or incident causing injury to a client or employee, take appropriate corrective action, and ensure that a record of all accidents and/or incidents and the corrective measures taken is maintained;
- (g) comply with the provisions of the Montana Elder and Developmentally Disabled Abuse Prevention Act, 52-3-801 et seq., MCA;
- (h) ensure that the center has a policies and procedures manual that governs the operations of the center, that is available to and followed by all employees, and that is available to clients upon request;
- (i) maintain a personnel record for each employee, including for substitute personnel, that meets the requirements of ARM 37.106.2620(3), and retain it for at least one year after the employee terminates employment;
- (j) maintain a list of the names, addresses, and telephone numbers of all employees, including substitute personnel, and ensure that all such lists for the prior 12 months are retained on the premises; and
- (k) maintain an ongoing census of clients, documenting their attendance, and retain census data covering at least the past 12 months.
- (14) At least one employee must be present at the center at all times in which a client is present at the center.
- (15) Written daily work schedules for employees showing the personnel on duty at any given time must be kept at least one year.
- (16) The individual in charge of each work shift shall have keys to all doors in his/her possession.
- (17) The center must at all times employ sufficient staff to provide the services required by the number and characteristics of its clients. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1994 MAR p. 1838, Eff. 7/8/94; AMD, 1994 MAR p. 3194, Eff. 12/23/94; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2603 POLICIES AND PROCEDURES (1) The center shall have a written policies and procedures manual that must:

- (a) be available to and followed by all personnel;
- (b) be available to clients upon request;
- (c) include the following:
 - (i) a description of all services provided to clients;
 - (ii) policies and procedures ensuring the confidentiality of client records and safeguarding against loss, destruction, or unauthorized use of those records;
 - (iii) infection control policies and procedures meeting the requirements of ARM 37.106.2609; and
 - (iv) a disaster and fire plan meeting the requirements of ARM 37.106.2608.

(2) If an adult day care center is operated on the premises of another licensed health care facility, the center's manual may refer to the policies and procedures of the other licensed health care facility, as appropriate. The center manual must also include policies and procedures which are applicable to the center itself and which reflect how services between the two facilities are integrated. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1994 MAR p. 1838, Eff. 7/8/94; TRANS, from DHES, 2002 MAR p. 185.)

Rules 04 and 05 reserved

37.106.2606 CONSTRUCTION (1) Any construction of or alteration, addition, or renovation to an adult day care center must meet all applicable local building and fire codes and be approved by the officer having jurisdiction to determine if the building codes are met by the facility and by the state fire marshal or his/her designee.

(2) An adult day care center must have an annual fire inspection conducted by the appropriate local authorities and maintain a record of such inspection for at least one year following the date of the inspection.

(3) An adult day care center must meet the water supply system requirements of ARM 37.111.115 and the sewage system requirements of ARM 37.111.116.

(4) The department hereby adopts and incorporates by reference ARM 37.111.115, which sets forth requirements for construction and maintenance of water supply systems, and ARM 37.111.116, which sets forth requirements for construction and maintenance of sewage systems. Copies of the materials cited above are available from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1994 MAR p. 1838, Eff. 7/8/94; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2607 ENVIRONMENTAL CONTROL (1) An adult day care center must be constructed and maintained so as to prevent as much as is practically possible the entrance and harborage of rats, mice, insects, flies, or other vermin.

(2) Hand cleansing soap or detergent and individual towels must be available at each sink in the center. A waste receptacle must be located near each sink.

(3) A minimum of 10 foot-candles of light must be available in all rooms and hallways, with the following exceptions:

(a) All reading lamps must have a capacity to provide a minimum of 30 foot-candles of light;

(b) All toilet and bathing areas must be provided with a minimum of 30 foot-candles of light;

(c) General lighting in food preparation areas must be a minimum of 50 foot-candles of light;

(d) Hallways must be illuminated at all times by at least a minimum of five foot-candles of light at the floor. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1994 MAR p. 1838, Eff. 7/8/94; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2608 DISASTER AND FIRE PLAN (1) An adult day care center shall develop a disaster and fire plan in conjunction with other emergency services in the community that includes a procedure that will be followed in the event of a natural or human caused disaster. This plan must be included in the center's policies and procedures manual.

(2) An adult day care center shall conduct a drill of such procedure at least once a year. After a drill, the center shall prepare and retain on file a written report including, but not limited to, the following:

- (a) date and time of the drill;
- (b) the names of staff involved in the drill;
- (c) the names of other health care facilities, if any, that were involved in the drill;
- (d) the names of other persons involved in the drill;
- (e) a description of all phases of the drill procedure and suggestions for improvement; and
- (f) the signature of the person conducting the drill.

(History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1994 MAR p. 1838, Eff. 7/8/94; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2609 INFECTION CONTROL (1) An adult day care center must ensure that each of its employees provides the center, prior to the time of employment, with documentation from a physician stating that the employee is free from communicable tuberculosis, and with the same documentation annually thereafter.

(2) The center must ensure that, on the first day of service and annually thereafter, each client in that center provides documentation from a physician showing that the client is free from communicable tuberculosis.

(3) The adult day care center must establish and maintain infection control policies and procedures sufficient to provide a safe environment and to prevent the transmission of disease. Such policies and procedures must include, at a minimum, the following guidelines:

(a) Any employee contracting a communicable disease that is transmissible to clients through food handling or personal care may not appear at work until the infectious disease can no longer be transmitted. The decision to return to work must be made by the manager in accordance with the policies and procedures instituted by the center; and

(b) If, after admission, a client is suspected of having a communicable disease that would endanger the health and welfare of other clients, the manager shall contact the client's physician and shall ensure that appropriate safety measures are taken on behalf of that client and the other clients. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1994 MAR p. 1838, Eff. 7/8/94; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2610 MAINTENANCE AND HOUSEKEEPING (1) Each adult day care center shall have a written maintenance program describing the procedures that must be utilized by maintenance personnel to keep the building and equipment in repair and free from hazards.

(2) All electrical, mechanical, plumbing, fire protection, heating, and sewage disposal systems must be kept in operational condition.

(3) The temperature of hot water supplied to handwashing and bathing facilities must not exceed 120°F.

(4) An adult day care center shall provide housekeeping services on a daily basis or as needed.

(5) Cleaners used in cleaning bathtubs, showers, sinks, urinals, toilet bowls, toilet seats, and floors must contain fungicides or germicides with current EPA registration for that purpose.

(6) Floors must be covered with an easily cleanable covering.

(7) Carpets are prohibited in bathrooms, kitchens, laundries, or janitor closets.

(8) Walls and ceilings must be kept in good repair and be of a finish that can be easily cleaned.

(9) An adult day care center must be kept clean and free of odors. Deodorants may not be used for odor control in lieu of proper ventilation. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1994 MAR p. 1838, Eff. 7/8/94; TRANS, from DHES, 2002 MAR p. 185.)

Rules 11 through 14 reserved

37.106.2615 LAUNDRY (1) If an adult day care center that is not located on the premises of another licensed health care facility elects to process its laundry on the center site, it must:

(a) set aside and utilize an area solely for laundry purposes;

(b) equip the laundry room with a mechanical washer and a dryer vented to the outside, handwashing facilities, a fresh air supply, and a hot water supply system that supplies the washer with water of at least 110°F during each use;

(c) have a separate area or room designed for use as a laundry, including an area for sorting soiled and clean linen and clothing. No laundry may be done in a food preparation or dishwashing area;

(d) provide well maintained containers to store and transport laundry that are impervious to moisture, keeping those used for soiled laundry separate from those used for clean laundry;

(e) dry all bed linen, towels, and wash cloths in the dryer;

(f) protect clean laundry from sources of contamination; and

(g) ensure that center staff handling laundry cover their clothes while working with soiled laundry, use separate clean covering for their clothes while handling clean laundry, and wash their hands both after working with soiled laundry and before they handle clean laundry. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1994 MAR p. 1838, Eff. 7/8/94; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2616 FOOD SERVICE (1) An adult day care center must provide:

(a) at least one meal a day to clients who stay at the center up to 10 hours;

(b) two meals per day to clients who stay at the center over 10 hours;

(c) three meals per 24-hour period to overnight clients.

(2) Snacks must be offered between meals.

(3) The center must establish and maintain standards relative to food sources; refrigeration; refuse handling; pest control; storage, preparation, procuring, serving, and handling food; and dishwashing procedures that are sufficient to prevent food spoilage and the transmission of infectious disease, including the following:

(a) Food must be obtained solely from sources that comply with all laws and rules relating to food and food labeling;

(b) The use of home canned foods is prohibited;

(c) If food subject to spoilage is removed from its original container, it must be kept sealed and labeled; and

(d) Food subject to spoilage must be dated.

(4) Foods must be served in amounts and a variety to meet the nutritional needs of each client.

(5) Foods must be cut, chopped, and ground to meet individual needs.

(6) Potentially hazardous food, such as meat and milk products, must be stored at 45°F or below. Hot food must be kept at 140°F or above during preparation and serving.

(7) Freezers must be kept at a temperature of 0°F or below and refrigerators must be kept at a temperature of 45°F or below. Thermometers must be placed in the warmest area of the refrigerator and freezer to assure proper temperature.

(8) Produce, food, and containers of food must be stored a minimum of six inches above the floor in a manner that protects the food from splash and other contamination.

(9) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practice during all working periods in food service.

(10) No food service employee who is either infected with a disease in a communicable form that can be transmitted by foods, a carrier of organisms that cause such a disease, or afflicted with a boil, an infected wound, or an acute respiratory infection, may work in the food service area in any capacity in which there is a likelihood of that person contaminating food or food contact surfaces with pathogenic organisms or transmitting disease to other persons.

(11) Tobacco products may not be used in the food preparation area.

(12) If an adult day care center contracts with another establishment to prepare food for the clients, a record of each such contract must be maintained for at least one year. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1994 MAR p. 1838, Eff. 7/8/94; TRANS, from DHES, 2002 MAR p. 185.)

Rules 17 through 19 reserved

37.106.2620 CLIENT AND PERSONNEL RECORDS (1) An adult day care center shall prepare a record for each client composed of at least the following information: name; address; sex; social security number; date of birth; marital status; insurance or financial responsibility information; religious affiliation; next of kin; the first day of service and the last day of service; the client's physician's name, address, and telephone number, if appropriate; required medications, if applicable; the date and time of visit to or by his/her physician; and a record of medications taken by the client as required in ARM 37.106.2621(3).

(2) The center shall retain all client records for no less than five years following the last day of service to the client or the client's death, whichever date is earlier.

(3) The center must maintain a personnel record for each employee, including for substitute personnel, that includes at least the following:

- (a) employment application;
- (b) employment contract;
- (c) TB test records;
- (d) references;
- (e) performance appraisals; and
- (f) a description of any significant incident involving both the employee and a client and its consequences. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1994 MAR p. 1838, Eff. 7/8/94; TRANS, from DHES, 2002 MAR p. 185.)

37.106.2621 MEDICATIONS (1) If a client is required to take medication while at the center, the client must be capable of taking his/her own medications, with the following assistance from staff:

(a) reminding the client to take the medication at the proper time;

(b) removing medication containers from storage;

(c) assisting with removal of a cap;

(d) guiding the hand of the client; and

(e) observing the client take the medication.

(2) All medications must remain in locked storage until the client is discharged.

(3) The center must maintain for each client a medication administration record listing all medications used and all doses taken or not taken by the client. (History: Sec. 50-5-103, MCA; IMP, Sec. 50-5-103, MCA; NEW, 1994 MAR p. 1838, Eff. 7/8/94; TRANS, from DHES, 2002 MAR p. 185.)

Subchapter 27

Personal Care

37.106.2701 APPLICATION OF RULES (REPEALED) (History: Sec. 50-5-103 and 50-5-227, MCA; IMP, Sec. 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2702 APPLICATION OF OTHER RULES (REPEALED) (History: Sec. 50-5-103, 50-5-227, MCA; IMP, Sec. 50-5-103, 50-5-227, MCA; NEW, 1995 MAR p. 852, Eff. 5/12/95; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2703 DEFINITIONS (REPEALED) (History: Sec. 50-5-103 and 50-5-227, MCA; IMP, Sec. 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

Rules 04 through 07 reserved

37.106.2708 ADMINISTRATION (REPEALED) (History: Sec. 50-5-103 and 50-5-227, MCA; IMP, Sec. 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2709 WRITTEN POLICIES AND PROCEDURES (REPEALED) (History: Sec. 50-5-103 and 50-5-227, MCA; IMP, Sec. 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2710 STAFFING (REPEALED) (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-226 and 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2711 FEES (REPEALED) (History: Sec. 50-5-103 and 50-5-227, MCA; IMP, Sec. 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; AMD, 1994 MAR p. 3193, Eff. 12/23/94; AMD, 1997 MAR p. 1203, Eff. 7/8/97; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

Rules 12 through 14 reserved

37.106.2715 CONSTRUCTION (REPEALED) (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-226 and 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2716 PHYSICAL PLANT (REPEALED) (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-226 and 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2717 ENVIRONMENTAL CONTROL (REPEALED) (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-226 and 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2718 INFECTION CONTROL (REPEALED) (History: Sec. 50-5-103 and 50-5-227, MCA; IMP, Sec. 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2719 LAUNDRY (REPEALED) (History: Sec. 50-5-103 and 50-5-227, MCA; IMP, Sec. 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

Rules 20 through 24 reserved

37.106.2725 RESIDENTIAL SERVICES (REPEALED) (History: Sec. 50-5-103 and 50-5-227, MCA; IMP, Sec. 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2726 PERSONAL SERVICES (REPEALED) (History: Sec. 50-5-103 and 50-5-227, MCA; IMP, Sec. 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2727 MEDICATIONS AND OXYGEN (REPEALED) (History: Sec. 50-5-103 and 50-5-227, MCA; IMP, Sec. 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2728 FOOD SERVICE (REPEALED) (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-226 and 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2729 SOCIAL SERVICES (REPEALED) (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-226 and 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2730 RECREATIONAL ACTIVITIES (REPEALED) (History: Sec. 50-5-103 and 50-5-227, MCA; IMP, Sec. 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2731 PETS (REPEALED) (History: Sec. 50-5-103 and 50-5-227, MCA; IMP, Sec. 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

Rules 32 through 39 reserved

37.106.2740 PERSONAL CARE FACILITIES: RESIDENCY APPLICATION PROCEDURES (REPEALED) (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-226 and 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; AMD, 2000 MAR p. 1653, Eff. 6/30/00; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2741 RESIDENT RECORDS (REPEALED) (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-226 and 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2742 RESIDENT RIGHTS (REPEALED) (History: Sec. 50-5-103 and 50-5-227, MCA; IMP, Sec. 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

Rules 43 through 49 reserved

37.106.2750 REQUIREMENTS FOR CATEGORY B FACILITIES ONLY (REPEALED) (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-226 and 50-5-227, MCA; NEW, 1994 MAR p. 2306, Eff. 8/12/94; TRANS, from DHES, 2002 MAR p. 185; REP, 2002 MAR p. 3638, Eff. 12/27/02.)

Subchapter 28

Assisted Living Facilities

37.106.2801 SCOPE (1) The rules in this chapter pertain to facilities which provide personal care services. These rules constitute the basis for the licensure of assisted living facilities by the Montana department of public health and human services. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2802 PURPOSE (1) The purpose of these rules is to establish standards for assisted living A, B and C facilities. Assisted living facilities are a setting for frail, elderly or disabled persons which provide supportive health and service coordination to maintain the residents' independence, individuality, privacy and dignity.

(2) An assisted living facility offers a suitable living arrangement for persons with a range of capabilities, disabilities, frailties and strengths. In general however, assisted living is not appropriate for individuals who are incapable of responding to their environment, expressing volition, interacting or demonstrating any independent activity. For example, individuals in a persistent vegetative state who require long term nursing care should not be placed or cared for in an assisted living facility. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2803 APPLICATION OF RULES (1) Category A facilities must meet the requirements of ARM 37.106.2801 through 37.106.2871.

(2) Category B facilities must meet the requirements of ARM 37.106.2801 through 37.106.2886.

(3) Category C facilities must meet the requirements of ARM 37.106.2801 through 37.106.2886 and ARM 37.106.2891 through 37.106.2898. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2804 APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapter 3 conflict with the terms of ARM Title 37, chapter 106, subchapter 27, the terms of subchapter 27 will apply to assisted living facilities. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2805 DEFINITIONS The following definitions apply in this subchapter:

(1) "Activities of daily living (ADLs)" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting and transferring.

(2) "Administrator" means the person designated on the facility application or by written notice to the department as the person responsible for the daily operation of the facility and for the daily resident care provided in the facility.

(3) "Advance directive" means a written instruction, such as a living will, a do not resuscitate (DNR) order or durable power of attorney (POA) for health care, recognized under state law relating to the provision of health care when the individual is incapacitated.

(4) "Ambulatory" means a person is capable of self mobility, either with or without mechanical assistance. If mechanical assistance is necessary, the person is considered ambulatory only if they can, without help from another person, transfer, safely operate and utilize the mechanical assistance, exit and enter the facility and access all common living areas of the facility.

(5) "Assisted living facility" is defined at 50-5-101, MCA.

(6) "Change of ownership" means the transfer of ownership of a facility to any person or entity other than the person or entity to whom the facility's license was issued, including the transfer of ownership to an entity which is wholly owned by the person or entity to whom the facility's license was issued.

(7) "Department" means the department of public health and human services.

(8) "Direct care staff" means a person or persons who directly assist residents with personal care services and medication. It does not include housekeeping, maintenance, dietary, laundry, administrative or clerical staff at times when they are not providing any of the above-mentioned assistance. Volunteers can be used for direct care, but may not be considered part of the required staff.

(9) "Health care plan" means a written resident specific plan identifying what ongoing assistance with activities of daily living and health care services is provided on a daily or regular basis by a licensed health care professional to a category B or C resident under the orders of the resident's practitioner. Health care plans are developed as a result of a resident assessment performed by a licensed health care professional who may consult with a multi-disciplinary team.

(10) "Health care service" means any service provided to a resident of an assisted living facility that is ordered by a practitioner and required to be provided or delegated by a licensed, registered or certified health care professional. Any other service, whether or not ordered by a physician or practitioner, that is not required to be provided by a licensed, registered, or certified health care professional is not to be considered a health care service.

(11) "Involuntary transfer or discharge" means the involuntary discharge of a resident from the licensed facility or the involuntary transfer of a resident to a bed outside of the licensed facility. The term does not include the transfer of a resident from one bed to another within the same licensed facility, or the temporary transfer or relocation of the resident outside the licensed facility for medical treatment.

(12) "License" means the document issued by the department that authorizes a person or entity to provide personal care or assisted living services.

(13) "Licensed health care professional" means a licensed physician, physician assistant-certified, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(14) "Mechanical assistance" means the use of any assistive device that aids in the mobility and transfer of the resident. Assistive devices include but are not limited to, braces, walkers, canes, crutches, wheelchairs and similar devices.

(15) "Medication administration" means an act in which a prescribed drug or biological is given to a resident by an individual who is authorized in accordance with state laws and regulations governing such acts.

(16) "Nursing care" means the practice of nursing as governed by Title 37, chapter 8, MCA and by administrative rules adopted by the board of nursing, found at ARM Title 8, chapter 32, subchapters 1 through 17.

(17) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(18) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission and prescription authority.

(19) "PRN medication" means an administration scheme, in which a medication is not routine, is taken as needed and requires the licensed health care professional or individual resident's cognitive assessment and judgement for need and effectiveness.

(20) "Resident" means anyone at least 18 years of age accepted for care in an assisted living facility.

(21) "Resident agreement" means a signed, dated, written document that lists all charges, services, refunds and move out criteria and complies with ARM 37.106.2823.

(22) "Resident certification" means written certification by a licensed health care professional that the facility can adequately meet the particular needs of a resident. The licensed health care professional making the resident certification must have:

(a) visited the resident on site; and

(b) determined that the resident's health care status does not require services at another level of care.

(23) "Resident's legal representative" or "resident's representative" means the resident's guardian, or if no guardian has been appointed, then the resident's family member or other appropriate person acting on the resident's behalf.

(24) "Self-administration assistance" means providing necessary assistance to any resident in taking their medication, including:

(a) removing medication containers from secured storage;

(b) providing verbal suggestions, prompting, reminding, gesturing or providing a written guide for self-administering medications;

(c) handing a prefilled, labeled medication holder, labeled unit dose container, syringe or original marked, labeled container from the pharmacy or a medication organizer as described in ARM 37.106.2847 to the resident;

(d) opening the lid of the above container for the resident;

(e) guiding the hand of the resident to self-administer the medication;

(f) holding and assisting the resident in drinking fluid to assist in the swallowing of oral medications; and

(g) assisting with removal of a medication from a container for residents with a physical disability which prevents independence in the act.

(25) "Service coordination" means that the facility either directly provides or assists the resident to procure services including, but not limited to:

(a) beauty or barber shop;

(b) financial assistance or management;

(c) housekeeping;

(d) laundry;

(e) recreation activities;

(f) shopping;

(g) spiritual services; and

(h) transportation.

(26) "Service plan" means a written plan for services developed by the facility with the resident or resident's legal representative which reflects the resident's capabilities, choices and, if applicable, measurable goals and risk issues. The plan is developed on admission and is reviewed and updated annually and if there is a significant change in the resident's condition. The development of the service plan does not require a licensed health care professional.

(27) "Severe cognitive impairment" means the loss of intellectual functions, such as thinking, remembering and reasoning, of sufficient severity to interfere with a person's daily functioning. Such a person is incapable of recognizing danger, self-evacuating, summoning assistance, expressing need and/or making basic care decisions.

(28) "Significant event" means a change in health status that requires care from a licensed health care professional such as:

- (a) a change in resident services;
- (b) explained or unexplained injuries to the resident that require medical intervention or first aid; or
- (c) resident on resident, resident on staff or staff on resident aggression.

(29) "Therapeutic diet" means a diet ordered by a physician or practitioner as part of treatment for a disease or clinical condition or to eliminate or decrease specific nutrients in the diet, (e.g., sodium) or to increase specific nutrients in the diet (e.g., potassium) or to provide food the resident is able to eat (e.g., mechanically altered diet).

(30) "Third party services" means care and services provided to a resident by individuals or entities who have no fiduciary interest in the facility.

(31) "Treatment" means a therapy, modality, product, device or other intervention used to maintain well being or to diagnose, assess, alleviate or prevent a disability, injury, illness, disease or other similar condition. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2003 MAR p. 17, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

Rules 06 through 08 reserved

37.106.2809 LICENSE APPLICATION PROCESS (1) Application for a license accompanied by the required fee shall be made to the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953 upon forms provided by the department and shall include full and complete information as to the:

(a) identity of each officer and director of the corporation, if organized as a corporation;

(b) identity of each general partner if organized as a partnership or limited liability partnership;

(c) name of the administrator and administrator's qualifications;

(d) name, address and phone number of the management company if applicable;

(e) physical location address, mailing address and phone number of the facility;

(f) maximum number of A beds, B beds and C beds in the facility;

(g) policies and procedures as outlined in ARM 37.106.2815; and

(h) resident agreement, as outlined in ARM 37.106.2831, intended to be used.

(2) Every facility shall have distinct identification or name and shall notify the department in writing within 30 days prior to changing such identification or name.

(3) Each assisted living facility shall promptly report to the department any plans to relocate the facility at least 30 days prior to effecting such a move.

(4) In the event of a facility change of ownership, the new owners shall provide the department the following:

(a) a completed application with fee;

(b) a copy of the fire inspection conducted within the past year;

(c) policies and procedures as prescribed in ARM 37.106.2815;

(i) if applicable, a written statement indicating that the same policies and procedures will be used is required;

(d) a copy of the resident agreement as outlined in ARM 37.106.2823 to be used; and

(e) documentation of compliance with ARM 37.106.2814.

(5) Under a change of ownership, the seller shall return to the department the assisted living license under which the facility had been previously operated. This information must be sent to the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2810 LICENSE RESTRICTIONS (1) A license is not subject to sale, assignment or other transfer, voluntary or involuntary.

(2) A license is valid only for the premises for which the original license was issued.

(3) The license remains the property of the department and shall be returned to the department upon closing or transfer of ownership.

(a) The address for returning the license is Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02.)

Rules 11 through 13 reserved

37.106.2814 ADMINISTRATOR (1) Each assisted living facility shall employ an administrator. The administrator is responsible for operation of the assisted living facility at all times and shall ensure 24-hour supervision of the residents.

(2) The administrator must meet the following minimum requirements:

(a) be currently licensed as a nursing home administrator in Montana or another state; or

(b) has successfully completed all of the self study modules of "The Management Library for Administrators and Executive Directors", a component of the assisted living training system published by the assisted living university (ALU); or

(c) be enrolled in and complete the self study course referenced in (2)(b), within six months from hire.

(3) The administrator must show evidence of at least 16 contact hours of annual continuing education relevant to the individual's duties and responsibilities as administrator of the assisted living facility.

(a) A nursing home administrator license or the ALU certification count as 16 hours of annual continuing education but only for the calendar year in which the license or certification was initially obtained.

(4) In the absence of the administrator, a staff member must be designated to oversee the operation of the facility during the administrator's absence. The administrator or designee shall be in charge, on call and physically available on a daily basis as needed, and shall ensure there are sufficient, qualified staff so that the care, well being, health and safety needs of the residents are met at all times.

(a) If the administrator will be absent from the facility for more than 30 continuous days, the department shall be given written notice of the individual who has been appointed the designee. The appointed designee must meet all the requirements of ARM 37.106.2814(1) and (2).

(5) The administrator or designee may not be a resident of the facility.

(a) A designee must:

(i) be age 18 or older; and

(ii) have demonstrated competencies required to assure protection of the safety and physical, mental and emotional health of residents.

- (6) The administrator or their designee shall:
- (a) ensure that current facility licenses are posted at a place in the facility that is accessible to the public at all times;
 - (b) oversee the day-to-day operation of the facility including but not limited to:
 - (i) all personal care services to residents;
 - (ii) the employment, training and supervision of staff and volunteers;
 - (iii) maintenance of buildings and grounds; and
 - (iv) record keeping; and
 - (c) protect the safety and physical, mental and emotional health of residents.
- (7) The facility shall notify the department within five days of an administrator's departure or a new administrator's employment.
- (8) The administrator or designee shall initiate transfer of a resident through the resident and/or the resident's practitioner, appropriate agencies or the resident's legal representative when the resident's condition is not within the scope of services of the assisted living facility.
- (9) The administrator or designee shall accept and retain only those residents whose needs can be met by the facility and who meet the acceptance criteria found in 50-5-226, MCA.
- (10) The administrator or designee must ensure that a resident who is ambulatory only with mechanical assistance is:
- (a) able to safely self-evacuate the facility without the aid of an elevator or similar mechanical lift;
 - (b) have the ability to move past a building code approved occupancy barrier or smoke barrier into an adjacent wing or building section; or
 - (c) reach and enter an approved area of refuge.
- (11) The administrator or designee shall ensure and document that orientation is provided to all employees at a level appropriate to the employee's job responsibilities.
- (12) The administrator or designee shall review every accident or incident causing injury to a resident and document the appropriate corrective action taken to avoid a reoccurrence.
- (13) The owner of an assisted living facility may serve as administrator, or in any staff capacity, if the owner meets the qualifications specified in these rules. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2815 WRITTEN POLICIES AND PROCEDURES (1) A policy and procedure manual for the organization and operation of the assisted living facility shall be developed, implemented, kept current and reviewed as necessary to assure the continuity of care and day to day operations of the facility. Each review of the manual shall be documented, and the manual shall be available in the facility to staff, residents, residents' legal representatives and representatives of the department at all times.

(2) The manual must include an organizational chart delineating the lines of authority, responsibility and accountability for the administration and resident care services of the facility. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2003 MAR p. 17, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2816 ASSISTED LIVING FACILITY STAFFING (1) The administrator shall develop minimum qualifications for the hiring of direct care staff and support staff.

(2) The administrator shall develop policies and procedures for screening, hiring and assessing staff which include practices that assist the employer in identifying employees that may pose risk or threat to the health, safety or welfare of any resident and provide written documentation of findings and the outcome in the employee's file.

(3) New employees shall receive orientation and training in areas relevant to the employee's duties and responsibilities, including:

(a) an overview of the facility's policies and procedures manual in areas relevant to the employee's job responsibilities;

(b) a review of the employee's job description;

(c) services provided by the facility;

(d) the Montana Elder and Persons with Developmental Disabilities Abuse Prevention Act found at 52-3-801, MCA; and

(e) the Montana Long-Term Care Resident Bill of Rights Act found at 50-5-1101, MCA.

(4) In addition to meeting the requirements of (3), direct care staff shall be trained to perform the services established in each resident service plan.

(5) Direct care staff shall be trained in the use of the abdominal thrust maneuver and basic first aid. If the facility offers cardiopulmonary resuscitation (CPR), at least one person per shift shall hold a current CPR certificate.

(6) The following rules must be followed in staffing the assisted living facility:

(a) direct care staff shall have knowledge of the resident's needs and any events about which the employee should notify the administrator or the administrator's designated representative;

(b) the facility shall have a sufficient number of qualified staff on duty 24 hours a day to meet the scheduled and unscheduled needs of each resident, to respond in emergency situations, and all related services, including, but not limited to:

(i) maintenance of order, safety and cleanliness;

(ii) assistance with medication regimens;

(iii) preparation and service of meals;

(iv) housekeeping services and assistance with laundry;
and

(v) assurance that each resident receives the supervision and care required by the service or health care plan to meet the resident's basic needs;

(c) an individual on each work shift shall have keys to all relevant resident care areas and access to all items needed to provide appropriate resident care;

(d) direct care staff may not perform any service for which they have not received appropriate documented training; and

(e) facility staff may not perform any health care service that has not been appropriately delegated under the Montana Nurse Practice Act or in the case of licensed health care professionals that is beyond the scope of their license.

(7) Employees and volunteers may perform support services, such as cooking, housekeeping, laundering, general maintenance and office work after receiving an orientation to the appropriate sections of the facility's policy and procedure manual. Any person providing direct care, however, is subject to the orientation and training requirements for direct care staff.

(8) Volunteers may be utilized in the facility, but may not be included in the facility's staffing plan in lieu of facility employees. In addition, the use of volunteers is subject to the following:

(a) volunteers must be supervised and be familiar with resident rights and the facility's policy and procedures which apply to their duties as a volunteer; and

(b) volunteers shall not assist with medication administration, delegated nursing tasks, bathing, toileting or transferring.

(9) Residents may participate voluntarily in performing household duties and other tasks suited to the individual resident's needs and abilities, but residents may not be used as substitutes for required staff or be required to perform household duties or other facility tasks. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2817 EMPLOYEE FILES (1) The facility is responsible for maintaining a file on each employee and substitute personnel.

(2) The following documentation from employee files must be made available to the department at all reasonable times, but shall be made available to the department within 24 hours after the department requests to review the files.

(a) the employee's name;

(b) a copy of current credentials, certifications or professional licenses as required to perform the job description;

(c) an initialed copy of the employee's job description; and

(d) initialed documentation of employee orientation and ongoing training including documentation of Heimlich maneuver training, basic first aid and CPR.

(3) The facility shall keep an employee file that meets the requirements set forth in (2) for the administrator of the facility, even when the administrator is the owner.

(4) The employer must have evidence of contact to verify that each certified nursing assistant has no adverse findings entered on the nurse aid registry maintained by the department in the certification bureau.

(a) A facility may not employ or continue employment of any person who has adverse findings on the department nurse aide registry maintained by the department's certification bureau. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02.)

Rules 18 through 20 reserved

37.106.2821 RESIDENT APPLICATION AND NEEDS ASSESSMENT PROCEDURE

(1) All facilities must develop a written application procedure for admission to the facility which includes the prospective resident's name and address, sex, date of birth, marital status and religious affiliation (if volunteered).

(2) The facility shall determine whether a potential resident meets the facility's admission requirements and that the resident is appropriate to the facility's license endorsement as either a category A, category B or category C facility, as specified in 50-5-226(2) through (4), MCA.

(3) Prior to admission the facility shall conduct an initial resident needs assessment to determine the prospective resident's needs.

(4) The initial resident's needs assessment must include documentation of the following:

(a) cognitive patterns to include short-term memory, long term memory, memory recall, decision making change in cognitive status/awareness or thinking disorders;

(b) sensory patterns to include hearing, ability to understand others, ability to make self understood and ability to see in adequate light;

(c) activities of daily living (ADL) functional performance to include ability to transfer, locomotion, mobility devices, dressing, eating, use of toilet, bladder continence, bowel continence, continence appliance/programs, grooming and bathing;

(d) mood and behavior patterns, sadness or anxiety displayed by resident, wandering, verbally abusive, physically abusive and socially inappropriate/disruptive behavior;

(e) health problems/accidents;

(f) weight/nutritional status to include current weight and nutritional complaints;

(g) skin problems;

(h) medication use to include taking prescription and/or over-the-counter, recent changes, currently taking an antibiotic, antipsychotic use, antianxiety/hypnotic use and antidepressant use; and

(i) use of restraints, safety or assistive devices.

(5) The department shall collect a fee of \$100 from a prospective resident, resident or facility appealing a rejection or relocation decision made pursuant to ARM 37.106.2821, to cover the cost of the independent nurse resident needs assessment. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2822 RESIDENT SERVICE PLAN: CATEGORY A (1) Based on the initial resident's needs assessment, an initial service plan shall be developed for all category A residents. The initial service plan shall be reviewed or modified within 60 days of admission to assure the service plan accurately reflects the resident's needs and preferences.

(2) The service plan shall include a written description of:

- (a) what the service is;
- (b) who will provide the service;
- (c) when the service is performed;
- (d) where and how often the service is provided;
- (e) changes in service and the reasons for those changes;
- (f) if applicable, the desired outcome;
- (g) an emergency contact with phone number; and
- (h) the prospective resident's practitioner's name, address, telephone number and whether there are any health care decision making instruments in effect if applicable.

(3) The resident's needs assessment and service plan shall be reviewed and updated annually, or any time the resident's needs change significantly.

(4) A copy of the resident service plan shall be given to the resident or resident's legal representative and be made part of the resident file. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2823 RESIDENT AGREEMENT (1) An assisted living facility shall enter into a written resident agreement with each prospective resident prior to admission to the assisted living facility. The agreement shall be signed and dated by a facility representative and the prospective resident or the resident's legal representative. The facility shall provide the prospective resident or the resident's legal representative and the resident's practitioner, if applicable, a copy of the agreement and shall explain the agreement to them. The agreement shall include at least the following items:

(a) the criteria for requiring transfer or discharge of the resident to another level of care;

(b) a statement explaining the availability of skilled nursing or other professional services from a third party provider to a resident in the facility;

(c) the extent that specific assistance will be provided by the facility as specified in the resident service plan;

(d) a statement explaining the resident's responsibilities including but not limited to house rules, the facility grievance policy, facility smoking policy and policies regarding pets;

(e) a listing of specific charges to be incurred for the resident's care, frequency of payment, facility rules relating to nonpayment of services and security deposits, if any are required;

(f) a statement of all charges, fines, penalties or late fees that shall be assessed against the resident;

(g) a statement that the agreed upon facility rate shall not be changed unless 30 day advance written notice is given to the resident and/or the resident's legal representative; and

(h) an explanation of the assisted living facility's policy for refunding payment in the event of the resident's absence, discharge or transfer from the facility and the facility's policy for refunding security deposits.

(2) When there are changes in services, financial arrangements, or in requirements governing the resident's conduct and care, a new resident/provider agreement must be executed or the original agreement must be updated by addendum and signed and dated by the resident or the resident's legal representative and by the facility representative. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

37.106.2824 INVOLUNTARY DISCHARGE CRITERIA (1) Residents shall be given a written 30 day notice when they are requested to move out. The administrator or designee shall initiate transfer of a resident through the resident's physician or practitioner, appropriate agencies, or the resident for resident's legal representative when:

(a) the resident's needs exceed the level of ADL services the facility provides;

(b) the resident exhibits behavior or actions that repeatedly and substantially interfere with the rights, health, safety or well being of other residents and the facility has tried prudent and reasonable interventions;

(i) documentation of the interventions attempted by the facility shall become part of the resident's record;

(c) the resident, due to severe cognitive decline, is not able to respond to verbal instructions, recognize danger, make basic care decisions, express needs or summon assistance, except as permitted by ARM 37.106.2891 through 37.106.2898;

(d) the resident has a medical condition that is complex, unstable or unpredictable and treatment cannot be appropriately developed in the assisted living environment;

(e) the resident has had a significant change in condition that requires medical or psychiatric treatment outside the facility and at the time the resident is to be discharged from that setting to move back into the assisted living facility, appropriate facility staff have re-evaluated the resident's needs and have determined the resident's needs exceed the facility's level of service. Temporary absence for medical treatment is not considered a move out; or

(f) the resident has failed to pay charges after reasonable and appropriate notice.

(2) The resident's 30 day written move out notice shall, at a minimum, include the following:

(a) the reason for transfer or discharge;

(b) the effective date of the transfer or discharge;

(c) the location to which the resident is to be transferred or discharged;

(d) a statement that the resident has the right to appeal the action to the department; and

(e) the name, address and telephone number of the state long term care ombudsman.

(3) A resident may be involuntarily discharged in less than 30 days for the following reasons:

- (a) if a resident has a medical emergency;
- (b) the resident exhibits behavior that poses an immediate danger to self or others; or
- (c) if the resident has not resided in the facility for 30 days.

(4) A resident has a right to a fair hearing to contest an involuntary transfer or discharge.

(a) Involuntary transfer or discharge is defined in ARM 37.106.2805.

(b) A resident may exercise his or her right to appeal an involuntary transfer or discharge by submitting a written request for fair hearing to the Department of Public Health and Human Services, Quality Assurance Division, Office of Fair Hearings, P.O. Box 202953, 2401 Colonial Drive, Helena, MT 59620-2953, within 30 days of notice of transfer or discharge.

(c) The parties to a hearing regarding a contested transfer or discharge are the facility and the resident contesting the transfer or discharge. The department is not a party to such a proceeding, and relief may not be granted to either party against the department in a hearing regarding a contested transfer or discharge.

(d) Hearings regarding a contested transfer or discharge shall be conducted in accordance with ARM 37.5.304, 37.5.305, 37.5.307, 37.5.313, 37.5.322, 37.5.325 and 37.5.334, and a resident shall be considered a claimant for purposes of these rules.

(e) The request for appeal of a transfer or discharge does not automatically stay the decision of the facility to transfer or discharge the resident. The hearing officer may, for good cause shown, grant a resident's request to stay the facility's decision pending a hearing.

(f) The hearing officer's decision following a hearing shall be the final decision for the purposes of judicial review under ARM 37.5.334. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2003 MAR p. 17, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

Rules 25 through 27 reserved

37.106.2828 RESIDENT RIGHTS (1) The facility shall comply with the Montana Long-Term Care Residents' Bill of Rights, found at 50-5-1101, et seq., MCA. This includes the posting of the facility's statement of resident rights in a conspicuous place. Prior to or upon admission of a resident, the assisted living facility shall explain and provide the resident with a copy of the Montana Long-Term Care Residents' Bill of Rights.

(2) Residents have the right to execute living wills and other advance health care directives, and to have those advance directives honored by the facility in accordance with law.

(3) Prior to admission of a resident, the assisted living facility must inform a potential resident in writing of:

(a) their right (at the individual's option) to make decisions regarding medical care, including the right to accept or refuse medical treatment, and the right to formulate an advance directive; and

(b) explain and provide a copy of the facility's policies regarding advance directives, including a policy that the facility cannot implement an advance directive, either because of a conscientious objection (under 50-9-203, MCA), or, for some other reason as stated in facility policy (under 50-9-203, MCA).

(4) If the facility policy is not to implement an advanced directive the facility shall:

(a) take all reasonable steps to transfer the resident to a facility which has no prohibition against implementation of advance directives; or

(b) shall inform the resident in writing of any limitations placed upon implementation of the resident's advance directive by the facility.

(5) An assisted living facility may not require an execution of an advance directive as a condition for admission. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2829 RESIDENT FILE (1) At the time of admission, a separate file must be established for each category A, category B or category C resident. This file must be maintained on site in a safe and secure manner and must preserve the resident's confidentiality.

(2) The file shall include at least the following:

(a) the resident application form;

(b) a completed resident agreement, in accordance with ARM 37.106.2823;

(c) updates of resident/provider agreements, if any;

(d) the service plan for all category A residents;

(e) resident's weight on admission and at least annually thereafter for category A residents or more often as the resident, or the resident's licensed health care professional, determine a weight check is necessary;

(f) reports of significant events including:

(i) the provider's response to the event;

(ii) steps taken to safeguard the resident; and

(iii) facility contacts with family members or another responsible party;

(g) a record of communication between the facility and the resident or their representative if there has been a change in the resident's status or a need to discharge; and

(h) the date and circumstances of the resident's final transfer, discharge, or death, including notice to responsible parties and disposition of personal possessions.

(3) The resident file must be kept current. The file must be retained for a minimum of three years following the resident's discharge, transfer or death. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2830 THIRD PARTY SERVICES (1) A resident may purchase third party services provided by an individual or entity, licensed if applicable, to provide health care services under arrangements made directly with the resident or resident's legal representative under the provisions of 50-5-225(2)(a) and (b), MCA.

(2) The resident or resident's legal representative assumes all responsibility for arranging for the resident's care through appropriate third parties.

(3) Third party services shall not compromise the assisted living facility operation or create a danger to others in the facility. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2831 RESIDENT ACTIVITIES (1) A planned, diversified program of resident activities shall be offered daily for residents, including individual or group activities, on or off site, to meet the individual needs and well being of residents. Resident activities should promote and encourage self care and continuity of normal activities.

(2) The activities program shall be developed based on the activity needs and interest of residents as identified through the service plan.

(3) The facility shall provide directly, or by arrangement, local transportation for each resident to and from health care services provided outside the facility and to activities of social, religious or community events in which the resident chooses to participate according to facility policy.

(4) The activities program shall develop and post a monthly group activities calendar, which lists social, recreational, and other events available to residents. The facility shall maintain a record of past monthly activities, kept on file on the premises for at least three months. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02.)

Rules 32 through 34 reserved

37.106.2835 RESIDENT UNITS (1) A resident of an assisted living facility who uses a wheelchair or walker for mobility, or who is a category B or category C resident, must not be required to use a bedroom on a floor other than the first floor of the facility that is entirely above the level of the ground, unless the facility is designed and equipped in such a manner that the resident can move between floors or to an adjacent international conference of building code officials approved occupancy/fire barrier without assistance and the below grade resident occupancy is or has been approved by the local fire marshal.

(2) Each resident bedroom must satisfy the following requirements:

(a) in a previously licensed facility, no more than four residents may reside in a single bedroom;

(b) in new construction and facilities serving residents with severe cognitive impairment, occupancy must be limited to no more than two residents per room;

(c) exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, each single bedroom must contain at least 100 square feet, and each multi-bedroom must contain at least 80 square feet per resident;

(d) each resident must have a wardrobe, locker, or closet with minimum clear dimensions of one foot 10 inches in depth by one foot eight inches in width, with a clothes rod and shelf placed to permit a vertically clear hanging space of five feet for full length garments;

(e) a sufficient number of electrical outlets must be provided in each resident bedroom and bathroom to meet staff and resident needs without the use of extension cords;

(f) each resident bedroom must have operable exterior windows which meet the approval of the local fire or building code authority having jurisdiction;

(g) the resident's room door may be fitted with a lock if approved in the resident service plan, as long as facility staff have access to a key at all times in case of an emergency. Deadbolt locks are prohibited on all resident rooms. Resident room door locks must be operable, on the resident side of the door, with a single motion and may not require special knowledge for the resident to open;

(h) kitchens or kitchenettes in resident rooms are permitted if the resident's service plan permits unrestricted use and the cooking appliance can be removed or disconnected if the service plan indicates the resident is not capable of unrestricted use.

(3) A hallway, stairway, unfinished attic, garage, storage area or shed or other similar area of an assisted living facility must not be used as a resident bedroom. Any other room must not be used as a resident bedroom if it:

(a) can only be reached by passing through a bedroom occupied by another resident;

(b) does not have an operable window to the outside; or

(c) is used for any other purpose.

(4) Any provision of this rule may be waived at the discretion of the department if conditions in existence prior to the adoption of this rule or construction factors would make compliance extremely difficult or impossible and if the department determines that the level of safety to residents and staff is not diminished. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2836 FURNISHINGS (1) Each resident in an assisted living facility must be provided the following at a minimum by the facility:

- (a) an individual towel rack;
- (b) a handicap accessible mirror mounted or secured to allow for convenient use by both wheelchair bound residents and ambulatory persons;
- (c) clean, flame-resistant or non-combustible window treatments or equivalent, for every bedroom window;
- (d) an electric call system comprised of a fixed manual, pendant cordless or two way interactive, UL or FM listed system which must connect resident rooms to the care staff center or staff pagers; and
- (e) for each multiple-bed room, either flame-resistant privacy curtains for each bed or movable flame-resistant screens to provide privacy upon the request of a resident.

(2) Following the discharge of a resident, all of the equipment and bedding used by that resident and owned by the facility must be cleaned and sanitized. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2837 COMMON USE AREAS (1) The facility must provide:

(a) a dining room of sufficient size to accommodate all the residents comfortably with dining room furnishings that are well constructed and tables designed to accommodate the use of wheelchairs;

(b) at least one centrally located common area in which residents may socialize and participate in recreational activities. A common area may include, without limitation, a living room, dining room, enclosed porch or solarium. The common area must be large enough to accommodate those to be served without overcrowding; and

(c) enough total living or recreational and dining room area to allow at least 30 square feet per resident.

(2) All common areas must be furnished and equipped with comfortable furniture and reading lights in quantities sufficient to accommodate those to be served.

(3) Any provision of this rule may be waived at the discretion of the department if conditions in existence prior to the adoption of this rule or construction factors would make compliance extremely difficult or impossible and if the department determines that the level of safety to residents and staff is not diminished. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2838 RESIDENT TOILETS AND BATHING (1) The facility shall provide:

- (a) at least one toilet for every four residents;
 - (b) one bathing facility for every 12 residents; and
 - (c) a toilet and sink in each toilet room.
- (2) All resident rooms with toilets or shower/bathing facilities must have an operable window to the outside or must be exhausted to the outside by a mechanical ventilation system.
- (3) Each resident room bathroom shall:
- (a) be in a separate room with a toilet. A sink need not be in the bathroom but shall be in close proximity to the toilet. A shower or tub is not required if the facility utilizes a central bathing unit or units; and
 - (b) have at least one towel bar per resident, one toilet paper holder, one accessible mirror and storage for toiletry items.
- (4) All doors to resident bathrooms shall open outward or slide into the wall and shall be unlockable from the outside.
- (a) Dutch doors, bi-folding doors, sliding pocket doors and other bi-swing doors may be used if they do not impede the bathroom access width and are approved by the department. A shared bathroom with two means of access is also acceptable.
- (5) In rooms used by category C or other special needs residents, the bathroom does not have to be in a separate room and does not require a door.
- (6) Each resident must have access to a toilet room without entering another resident's room or the kitchen, dining or living areas.
- (7) Each resident bathroom or bathing room shall have an emergency call system reporting to the staff location with an audible signal. The device must be silenced at the location only and shall be accessible to an individual collapsed on the floor.
- (8) Any provision of this rule may be waived at the discretion of the department if conditions in existence prior to December 27, 2002, or construction factors would make compliance extremely difficult or impossible and if the department determines that the level of safety to residents and staff is not diminished. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2839 ENVIRONMENTAL CONTROL (1) The assisted living facility shall provide a clean, comfortable and well maintained home that is safe for residents and employees at all times.

(2) A minimum of 10 foot candles of light must be available in all rooms, with the following exceptions:

(a) all reading lamps must have a capacity to provide a minimum of 30 foot candles of light;

(b) all toilet and bathing areas must be provided with a minimum of 30 foot candles of light;

(c) general lighting in food preparation areas must be a minimum of 30 foot candles of light; and

(d) hallways must be illuminated at all times by at least a minimum of five foot candles of light at the floor.

(3) Temperature in resident rooms, bathrooms, and common areas must be maintained at a minimum of 68°F.

(4) A resident's ability to smoke safely shall be evaluated and addressed in the resident's service or health care plan. If the facility permits resident smoking:

(a) the rights of non-smoking residents shall be given priority in settling smoking disputes between residents; and

(b) if there is a designated smoking area within the facility, it shall be designed to keep all contiguous, adjacent or common areas smoke free.

(5) An assisted living facility may designate itself as non-smoking provided that adequate notice is given to all residents or all applicants in the facility residency agreement.

(History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

Rules 40 through 42 reserved

37.106.2843 PERSONAL CARE SERVICES (1) Personal care assistance must be provided to each resident in accordance with their established agreement and needs. Assistance must include, but is not limited to assisting with:

(a) personal grooming such as bathing, hand washing, shaving, shampoo and hair care, nail filing or trimming and dressing;

(b) oral hygiene or denture care;

(c) toileting and toilet hygiene;

(d) eating;

(e) the use of crutches, braces, walkers, wheelchairs or prosthetic devices, including vision and hearing aids; and

(f) self-medication.

(2) Evidence that the facility is meeting each resident's needs for personal care services include the following outcomes for residents:

(a) physical well being of the resident means the resident:

(i) has clean and groomed hair, skin, teeth and nails;

(ii) is nourished and hydrated;

(iii) is free of pressure sores, skin breaks or tears, chaps and chaffing;

(iv) is appropriately dressed for the season in clean clothes;

(v) risk of accident, injury and infection has been minimized; and

(vi) receives prompt emergency care for illnesses, injuries and life threatening situations;

(b) behavioral and emotional well being of the resident includes:

(i) an opportunity to participate in age appropriate activities that are meaningful to the resident if desired;

(ii) a sense of security and safety;

(iii) a reasonable degree of contentment; and

(iv) a feeling of stable and predictable environment;

(c) unless medically required by a physician or other practitioner's written order, the resident is:

(i) free to go to bed at the time desired;

(ii) free to get up in the morning at the time desired;

(iii) free to have visitors;

(iv) granted privacy;

- (v) assisted to maintain a level of self care and independence;
- (vi) assisted as needed to have good oral hygiene;
- (vii) made as comfortable as possible by the facility;
- (viii) free to make choices and assumes the risk of those choices;
- (ix) fully informed of the services that are provided by the facility;
- (x) free of abuse, neglect and exploitation;
- (xi) treated with dignity; and
- (xii) given the opportunity to participate in activities, if desired.

(3) In the event of accident or injury to a resident requiring emergency medical, dental or nursing care or, in the event of death, the assisted living facility shall:

- (a) immediately make arrangements for emergency care or transfer to an appropriate place for treatment;
- (b) immediately notify the resident's practitioner and the resident's legal representative.

(4) A resident shall receive skin care that meets the following standards:

(a) the facility shall practice preventive measures to identify those at risk and maintain a resident's skin integrity. Risk factors include:

(i) skin redness lasting more than 30 minutes after pressure is relieved from a bony prominence, such as hips, heels, elbows or coccyx; and

(ii) malnutrition/dehydration, whether secondary to poor appetite or another disease process; and

(b) an area of broken or damaged skin must be reported within 24 hours to the resident's practitioner. Treatment must be provided as ordered by the resident's practitioner.

(5) A person with a stage 3 or 4 pressure ulcer may not be admitted or permitted to remain in a category A facility.

(6) The facility shall ensure records of observations, treatments and progress notes are entered in the resident's record and that services are in accordance with the resident health care plan.

(7) Direct care staff shall receive training related to maintenance of skin integrity and the prevention of pressure sores by:

- (a) keeping residents clean and dry;
- (b) providing residents with clean and dry bed linens;
- (c) keeping residents well hydrated;
- (d) maintaining or restoring healthy nutrition; and
- (e) keeping the residents physically active and avoiding the overuse of wheelchairs, sitting no longer than one hour or remaining in one position for longer than two hours at one time, and other sources of skin breakdown in ADLs. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

Rules 44 and 45 reserved

37.106.2846 MEDICATIONS: STORAGE AND DISPOSAL (1) With the exception of resident medication organizers as discussed in ARM 37.106.2848, all medication must be stored in the container dispensed by the pharmacy or in the container in which it was purchased in the case of over-the-counter medication, with the label intact and clearly legible.

(2) Medications that require refrigeration must be segregated from food items and stored within the temperature range specified by the manufacturer.

(3) All medications administered by the facility shall be stored in locked containers in a secured environment such as a medication room or medication cart. Residents who are responsible for their own medication administration must be provided with a secure storage place within their room for their medications. If the resident is in a private room, locking the door when the resident leaves will suffice.

(4) Over-the-counter medications or home remedies requested by the resident shall be reviewed by the resident's practitioner or pharmacist as part of the development of a resident's service plan. Residents may keep over-the-counter medications in their room with a written order by the residents' practitioners.

(5) The facility shall develop and implement a policy for lawful disposal of unused, outdated, discontinued or recalled resident medications. The facility shall return a resident's medication to the resident or resident's legal representative upon discharge. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2847 MEDICATIONS: PRACTITIONER ORDERS

(1) Medication and treatment orders shall be carried out as prescribed. The resident has the right to consent to or refuse medications and treatments. The practitioner shall be notified if a resident refuses consent to an order. Subsequent refusals to consent to an order shall be reported as required by the practitioner.

(2) A prescription medication for which the dose or schedule has been changed by the practitioner must be noted in the resident's medication administration record and the resident's service or health care plan by an appropriate licensed health care professional. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2848 MEDICATIONS: ADMINISTRATION AND PREPARATION

(1) All category A facility residents must self-administer their medication. Those category B facility residents that are capable of, and who wish to self-administer medications, shall be encouraged by facility staff to do so.

(2) Any direct care staff member who is capable of reading medication labels may be made responsible for providing necessary assistance to any resident in taking their medication, as defined in ARM 37.106.2805.

(3) Resident medication organizers may be prepared up to four weeks in advance and injectable medications as specified in (4)(c) by the following individuals:

(a) a resident or a resident's legal representative;

(b) a resident's family care giver, who is a person related to the resident by blood or marriage or who has full guardianship; or

(c) as otherwise provided by law.

(4) The individual referred to in (3) must adhere to the following protocol:

(a) verify that all medications to be set up carry a practitioner's current order;

(b) set up medications only from prescriptions in labeled containers dispensed by a registered pharmacist or from over-the-counter drug containers with intact, clearly readable labels; and

(c) set up injectable insulin up to seven days in advance by drawing insulin into syringes identified for content, date and resident. Other injectable medications must be set up according to the recommendations provided by the pharmacy.

(5) The facility may require residents to use a facility approved medication dispensing system or to establish medication set up criteria, but shall not require residents to purchase prescriptions from a specific pharmacy.

(6) No resident or staff member may be permitted to use another resident's medication. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2849 MEDICATIONS: RECORDS AND DOCUMENTATION

(1) An accurate medication record for each resident shall be kept of all medications, including over-the-counter medications, for those residents whose self-administration of medication requires monitoring and/or assistance by the facility staff.

(2) The record shall include:

(a) name of medication, reason for use, dosage, route and date and time given;

(b) name of the prescribing practitioner and their telephone number;

(c) any adverse reaction, unexpected effects of medication or medication error, which must also be reported to the resident's practitioner;

(d) allergies and sensitivities, if any;

(e) resident specific parameters and instructions for PRN medications;

(f) documentation of treatments with resident specific parameters;

(g) documentation of doses missed or refused by resident and why;

(h) initials of the person monitoring and/or assisting with self-administration of medication; and

(i) review date and name of reviewer.

(3) The facility shall maintain legible signatures of staff who monitor and/or assist with the self-administration of medication, either on the medication administration record or on a separate signature page.

(4) A medication record need not be kept for those residents for whom written authorization has been given by their practitioner to keep their medication in their rooms and to be fully responsible for taking the medication in the correct dosage and at the proper time. The authorization must be renewed on an annual basis.

(5) The facility shall maintain a record of all destroyed or returned medications in the resident's record or closed resident file in the case of resident transfer or discharge.

(History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02.)

Rules 50 through 52 reserved

37.106.2853 OXYGEN USE (1) A resident who requires the use of oxygen:

(a) shall be permitted to self-administer the oxygen if the resident is capable of:

(i) determining their need for oxygen; and

(ii) administering the oxygen to themselves or with assistance.

(2) The direct care staff employed by the facility shall monitor the ability of the resident to operate the equipment in accordance with the orders of the practitioner.

(3) The facility shall ensure that all direct care staff who may be required to assist resident's with administration of oxygen have demonstrated the ability to properly operate the equipment.

(4) The following rules must be followed when oxygen is in use:

(a) oxygen tanks must be secured and properly stored at all times;

(b) no smoking or open flames may be allowed in rooms in which oxygen is used or stored, and such rooms must be posted with a conspicuous "No Smoking, Oxygen in Use" sign;

(c) a backup portable unit for the administration of oxygen shall be present in the facility at all times when a resident who requires oxygen is present in the facility, this includes when oxygen concentrators are used;

(d) the equipment used to administer oxygen must be in good working condition; and

(e) the equipment used to administer oxygen is removed from the facility when it is no longer needed by the resident.

(History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2854 USE OF RESTRAINTS, SAFETY DEVICES, ASSISTIVE DEVICES, AND POSTURAL SUPPORTS (1) The facility shall comply with the rules governing the use of restraints, safety devices, assistive devices and postural supports in long term care facilities. The provisions of ARM 37.106.2901, 37.106.2902, 37.106.2904, 37.106.2905 and 37.106.2908 shall apply. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2855 INFECTION CONTROL (1) The assisted living facility must establish and maintain infection control policies and procedures sufficient to provide a safe environment and to prevent the transmission of disease. Such policies and procedures must include, at a minimum, the following requirements:

(a) any employee contracting a communicable disease that is transmissible to residents through food handling or direct care must not appear at work until the infectious diseases can no longer be transmitted. The decision to return to work must be made by the administrator or designee, in accordance with the policies and procedures instituted by the facility;

(b) if, after admission to the facility, a resident is suspected of having a communicable disease that would endanger the health and welfare of other residents, the administrator or designee, must contact the resident's practitioner and assure that appropriate safety measures are taken on behalf of that resident and the other residents; and

(c) all staff shall use proper hand washing technique after providing direct care to a resident.

(2) The facility, where applicable, shall comply with applicable statutes and rules regarding the handling and disposal of hazardous waste. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

Rules 56 through 58 reserved

37.106.2859 PETS (1) Unless the facility disallows it, residents in an assisted living facility may keep household pets, as permitted by local ordinance, subject to the following provisions:

- (a) pets must be clean and disease-free;
- (b) the immediate environment of pets must be kept clean;
- (c) birds must be kept in appropriate enclosures, unless the bird is a companion breed maintained and supervised by the owner; and

- (d) pets that are kept at the facility shall have documentation of current vaccinations, including rabies, as appropriate.

(2) The administrator or designee shall determine which pets may be brought into the facility. Upon approval, family members may bring pets to visit, if the pets are clean, disease-free and vaccinated as appropriate.

(3) Facilities that allow birds shall have procedures that protect residents, staff and visitors from psittacosis, ensure minimum handling of droppings and require droppings to be placed in a plastic bag for disposal.

(4) Prior to admission of companion birds, documentation of the import, out-of-state veterinarian health certificate and import permit number provided by the pet store or breeder will be provided and maintained in the owners records. If the health certificate and import permit number is not available, or if the bird was bred in-state, a certificate from a veterinarian stating that the bird is disease free is required prior to residency. If the veterinarian certificate cannot be obtained by the move-in date the resident may keep the bird enclosed in a private single occupancy room, using good hand washing after handling the bird and bird droppings until the veterinarian examination is obtained.

(5) Pets may not be permitted in food preparation, storage or dining areas during meal preparation time or during meal service or in any area where their presence would create a significant health or safety risk to others. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2860 FOOD SERVICE (1) The facility must establish and maintain standards relative to food sources, refrigeration, refuse handling, pest control, storage, preparation, procuring, serving and handling food and dish washing procedures that are sufficient to prevent food spoilage and the transmission of infectious disease. These standards must include the following:

(a) food must be obtained from sources that comply with all laws relating to food and food labeling;

(b) the use of home-canned foods is prohibited;

(c) food subject to spoilage removed from its original container, must be kept sealed, labeled, and dated.

(2) Foods must be served in amounts and a variety sufficient to meet the nutritional needs of each resident. The facility must provide therapeutic diets when prescribed by the resident's practitioner. At least three meals must be offered daily and at regular times, with not more than a 14-hour span between an evening meal and breakfast unless a nutritious snack is available in the evening, then up to 16 hours may lapse between a substantial evening meal and breakfast.

(3) Records of menus as served must be filed on the premises for three months after the date of service for review by the department.

(4) The facility shall take into consideration the preferences of the residents and the need for variety when planning the menu. Either the current day or the current week's menu shall be posted for resident viewing.

(5) The facility shall employ food service personnel suitable to meet the needs of the residents.

(a) Foods must be cut, chopped and ground to meet individual needs or as ordered by the resident's physician or practitioner;

(b) if the cook or other kitchen staff must assist a resident with direct care outside the food service area, they must properly wash their hands before returning to food service; and

(c) food service shall comply with the Montana administrative rule requirements for compliance with ARM Title 37, chapter 110, subchapter 2, food service establishments administered by the food and consumer safety section of the department of public health and human services.

(6) If the facility admits residents requiring therapeutic or special diets, the facility shall have an approved dietary manual for reference when preparing a meal. Dietitian consultation shall be provided as necessary and documented for residents requiring therapeutic diets.

(7) A minimum of a one-week supply of non-perishable foods and a two-day supply of perishable foods must be available on the premises.

(8) Potentially hazardous food, such as meat and milk products, must be stored at 41°F or below. Hot food must be kept at 140°F or above during preparation and serving.

(9) Freezers must be kept at a temperature of 0°F or below and refrigerators must be kept at a temperature of 41°F or below. Thermometers must be placed in the warmest area of the refrigerator and freezer to assure proper temperature. Temperatures shall be monitored and recorded at least once a month in a log maintained at the facility for one year.

(10) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practice during all working periods in food service.

(11) A food service employee, while infected with a disease in a communicable form that can be transmitted by foods may not work in the food service area.

(12) Tobacco products may not be used in the food preparation and kitchen areas. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2861 LAUNDRY (1) Laundry service must be provided by the facility, either on the premises or off the facility site.

(2) If an assisted living facility processes its laundry on the premises it must:

(a) equip the laundry room with a mechanical washer and a dryer vented to the outside, hand washing facilities, a fresh air supply and a hot water supply system which supplies the washer with water of at least 110°F during each use;

(b) have ventilation in the sorting, holding and processing area that shall be adequate to prevent heat and odor build-up;

(c) dry all bed linen, towels and washcloths in a dryer; and

(d) ensure that facility staff handling laundry wash their hands both after working with soiled laundry and before they handle clean laundry.

(3) Resident's personal clothing must be laundered by the facility unless the resident or the resident's family accepts this responsibility. If the facility launders the resident's personal clothing, the facility is responsible for returning the clothing. Residents capable of laundering their own personal clothing and wishing to do so shall be provided the facilities and necessary assistance by the facility.

(4) The facility shall provide a supply of clean linen in good condition at all times that is sufficient to change beds often enough to keep them clean, dry and free from odors. Facility provided linens must be changed at least once a week and more often if the linens become dirty. In addition, the facility must ensure that each resident is supplied with clean towels and washcloths that are changed at least twice a week, a moisture-proof mattress cover and mattress pad, and enough blankets to maintain warmth and comfort while sleeping.

(5) Residents may use their own linen in the facility if they choose. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2862 HOUSEKEEPING (1) The following housekeeping rules must be followed:

(a) Supplies and equipment must be properly stored and must be on hand in a quantity sufficient to permit frequent cleaning of floors, walls, woodwork, windows and screens;

(b) Housekeeping personnel must be trained in proper procedures for preparing cleaning solutions, cleaning rooms and equipment and handling clean and soiled linen, trash and trays;

(c) Cleaners used in cleaning bathtubs, showers, lavatories, urinals, toilet bowls, toilet seats and floors must contain fungicides or germicides with current EPA registration for that purpose; and

(d) Garbage and trash must be stored for final disposal in areas separate from those used for preparation and storage of food and must be removed from the facility daily. Garbage containers must be kept clean.

(i) Containers used to store garbage in the kitchen and laundry room of the facility must be covered with a lid unless the containers are kept in an enclosed cupboard that is clean and prevents infestation by vermin. These containers shall be emptied daily and kept clean. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02.)

Rules 63 and 64 reserved

37.106.2865 PHYSICAL PLANT (1) An assisted living facility must be constructed and maintained so as to prevent as much as possible the entrance and harborage of rats, mice, insects, flies and other vermin.

(2) The facility and facility grounds shall be kept orderly and free of litter and refuse and secure from hazards.

(3) When required by the building code authority having jurisdiction, at least one primary grade level entrance to the facility shall be arranged to be fully accessible to disabled persons.

(4) All exterior pathways or accesses to the facility's common use areas and entrance and exit ways shall be of hard, smooth material, accessible and be maintained in good repair.

(5) All interior or exterior stairways used by residents shall have sturdy handrails on one side installed in accordance with the uniform building code with strength and anchorage sufficient to sustain a concentrated 250-pound load to provide residents safety with ambulation.

(6) All interior and exterior materials and surfaces (e.g., floors, walls, roofs, ceilings, windows and furniture) and all equipment necessary for the health, safety and comfort of the resident shall be kept clean and in good repair.

(7) Carpeting and other floor materials shall be constructed and installed to minimize resistance for passage of wheelchairs and other ambulation aids. Thresholds and floor junctures shall also be designed and installed for passage of wheelchairs and to prevent a tripping hazard.

(8) The facility shall install grab bars at each toilet, shower, sitz bath and tub with a minimum of one and one half inches clearance between the bar and the wall and strength and anchorage sufficient to sustain a concentrated 250-pound load. If a toilet grab bar assist is used over a toilet, it must be safely stabilized and secured in order to prevent mishap.

(9) Any structure such as a screen, half wall or planter which a resident could use for support while ambulating shall be securely anchored.

(10) The bottoms of tubs and showers must have surfaces that inhibit falling and slipping.

(11) Hand cleansing soap or detergent and single use individual towels must be available at each sink in the commonly shared areas of the facility. A waste receptacle must be located near each sink. Cloth towels and bar soap for common use are not permitted.

(12) Hot water temperature supplied to hand washing, bathing and showering areas may not exceed 120°F.

(13) The facility shall provide locked storage for all poisons, chemicals, rodenticides, herbicides, insecticides and other toxic material. Hazardous material safety sheets and labeling shall be kept available for staff for all such products used and stored in the facility.

(14) Flammable and combustible liquids shall be safely and properly stored in original or approved, properly labeled containers in areas inaccessible to residents in accordance with the uniform fire code in amounts acceptable to the fire code authority having jurisdiction.

(15) Containers used to store garbage in resident bedrooms and bathrooms are not required to be covered unless they are used for food, bodily waste or medical waste. Resident containers shall be emptied as needed, but at least weekly.

(16) If the facility utilizes a non-municipal water source, the water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or E. coli bacteria and corrective action is taken to assure the water is safe to drink. Documentation of testing is retained on the premises for 24 months from the date of the test.

(17) If a non-municipal sewage system is used, the sewage system must be in working order and maintained according to all applicable state laws and rules. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2866 CONSTRUCTION, BUILDING AND FIRE CODES

(1) Any construction of or alteration, addition, modification or renovation to an assisted living facility must meet the requirements of the building code and fire marshal agencies having jurisdiction and be approved by the officer having jurisdiction to determine if the building and fire codes are met by the facility.

(2) When a change in use and building code occupancy classification occurs, licensure approval shall be contingent on meeting the building code and fire marshal agencies' standards in effect at the time of such a change. Changes in use include adding a category B or C license endorsement to a previously licensed category A facility.

(3) Changes in the facility location, use or number of facility beds cannot be made without written notice to, and written approval received from, the department.

(4) Exit doors shall not include locks which prevent evacuation, except as approved by the fire marshal and building codes agencies having jurisdiction.

(5) Stairways, halls, doorways, passageways and exits from rooms and from the building shall be kept unobstructed at all times.

(6) All operable windows and outer doors that may be left open shall be fitted with insect screens.

(7) An assisted living care facility must have an annual fire inspection conducted by the appropriate local fire authority or the state fire marshal's office and maintain a record of such inspection for at least three years following the date of the inspection.

(8) An employee and resident fire drill is conducted at least two times annually, no closer than four months apart and includes residents, employees and support staff on duty and other individuals in the facility. A resident fire drill includes making a general announcement throughout the facility that a resident fire drill is being conducted or sounding a fire alarm.

(9) Records of employee and resident fire drills are maintained on the premises for 24 months from the date of the drill and include the date and time of the drill, names of the employees participating in the drill and identification of residents needing assistance for evacuation.

(10) A 2A10BC portable fire extinguisher shall be available on each floor of a greater than 20 resident facility and shall be as required by the fire authority having jurisdiction for facilities of less than 20 residents.

(11) Portable fire extinguishers must be inspected, recharged and tagged at least once a year by a person certified by the state to perform such services.

(12) Smoke detectors installed and maintained per the manufacturer's directions shall be installed in all resident rooms, bedroom hallways, living room, dining room and other open common spaces or as required by the fire authority having jurisdiction. An annual maintenance log of battery changes and other maintenance services performed shall be kept in the facility and made available to the department upon request.

(13) If there is an inside designated smoking area, it shall be separate from other common areas, and provided with adequate mechanical exhaust vented to the outside. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

Rules 67 through 71 reserved

37.106.2872 REQUIREMENTS FOR CATEGORY B FACILITIES ONLY

(1) An assisted living category B endorsement to the license shall be made by the licensing bureau of the department only after:

(a) initial department approval of the facility's category B policy and procedures;

(b) evidence of the administrator's and facility staff qualifications; and

(c) written approval from the building and fire code authorities having jurisdiction.

(2) An assisted living category B facility shall employ or contract with a registered nurse to provide or supervise nursing service to include:

(a) general health monitoring on each category B resident;

(b) performing a nursing assessment on category B residents when and as required;

(c) assistance with the development of the resident health care plan and, as appropriate, the development of the resident service plan; and

(d) routine nursing tasks, including those that may be delegated to licensed practical nurses (LPN) and unlicensed assistive personnel in accordance with the Montana Nurse Practice Act. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2873 ADMINISTRATOR QUALIFICATIONS: CATEGORY B

(1) An assisted living category B facility must be administered by a person who, in addition to the requirements found in ARM 37.106.2814, has one or more years experience working in the field of geriatrics or caring for disabled residents in a licensed facility.

(2) Providers in existence on the date of the final adoption of this rule will be granted one year to meet the category B administrator requirements found in (1). (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2874 DIRECT CARE STAFF QUALIFICATIONS: CATEGORY B

(1) In addition to the requirements found in ARM 37.106.2816, each nonprofessional staff providing direct care in an assisted living category B facility shall show documentation of in-house training related to the care and services they are to provide under direct supervision of a registered nurse or supervising nursing service providing category B care, including those tasks that may be delegated to licensed practical nurses (LPN) and unlicensed assistive personnel in accordance with the Montana Nurse Practice Act.

(2) Staff members whose job responsibilities will include supervising or preparing special or modified diets, as ordered by the resident's practitioner, shall receive training prior to performing this responsibility.

(3) Prior to providing direct care, direct care staff must:

(a) work under direct supervision for any direct care task not yet trained or properly oriented; and

(b) not take the place of the required certified person.
(History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; AMD, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2875 RESIDENT HEALTH CARE PLAN: CATEGORY B

(1) Within 21 days of admission to a category B status, the administrator or designee shall assure that a written resident health care assessment is performed on each category B resident.

(2) Each initial health care assessment by the licensed health care professional shall include, at a minimum, evaluation of the following:

- (a) cognitive status;
- (b) communication/hearing patterns;
- (c) vision patterns;
- (d) physical functioning and structural problems;
- (e) continence;
- (f) psychosocial well being;
- (g) mood and behavior patterns;
- (h) activity pursuit patterns;
- (i) disease diagnosis;
- (j) health conditions;
- (k) oral nutritional status;
- (l) oral dental status;
- (m) skin condition;
- (n) medication use; and
- (o) special treatment and procedures.

(3) A written resident health care plan shall be developed. The resident health care plan shall include, but not be limited to the following:

(a) a statement which informs the resident and the resident's practitioner, if applicable, of the requirements of 50-5-226(3) and (4), MCA.

(b) orders for treatment or services, medications and diet, if needed;

(c) the resident's needs and preferences for themselves;

(d) the specific goals of treatment or services, if appropriate;

(e) the time intervals at which the resident's response to treatment will be reviewed; and

(f) the measures to be used to assess the effects of treatment;

(g) if the resident requires care or supervision by a licensed health care professional, the health care plan shall include the tasks for which the professional is responsible.

(4) The category B resident's health care plan shall be reviewed, and if necessary revised upon change of condition.

(5) The health care plan shall be readily available to and followed by those staff and licensed health care professionals providing the services and health care. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02.)

Rules 76 through 78 reserved

37.106.2879 INCONTINENCE CARE: CATEGORY B (1) In order to maintain normal bladder and bowel functions, the facility shall provide individualized attention to each resident that meets the following minimum standards:

(a) the facility shall provide a resident who is incontinent of bowel or bladder adequate personal care services to maintain the person's skin integrity, hygiene and dignity and to prevent urinary tract infections.

(2) Evidence that the facility is meeting each resident's needs for maintaining normal bowel and bladder functions include the following outcomes for residents at risk for incontinence:

(a) the resident is checked during those periods when they are known to be incontinent, including the night;

(b) the resident is kept clean and dry;

(c) clean and dry bed linens are provided as needed; and

(d) if the resident can benefit from scheduled toileting, they are assisted or reminded to go to the bathroom at regular intervals.

(3) Indwelling catheters are permissible, if the catheter care is taught and supervised by a licensed health care professional under a practitioner's order. Observations and care must be documented.

(4) Facility staff shall not:

(a) withhold fluids from a resident to control incontinence; or

(b) have a resident catheterized to control incontinence for the convenience of staff. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2880 PREVENTION AND CARE OF PRESSURE SORES:
CATEGORY B (1) A resident shall receive skin care that meets the following standards:

(a) the facility shall practice preventive measures to identify those at risk and maintain a resident's skin integrity; and

(b) an area of broken or damaged skin must be reported within 24 hours to the resident's practitioner. Treatment must be as ordered by the resident's practitioner.

(2) A person with an open wound or having a pressure or stasis ulcer requiring treatment by a health care professional may not be admitted or permitted to remain in the facility unless:

(a) the wound is in the process of healing, as determined by a licensed health care professional, and is either:

(i) under the care of a licensed health care professional; or

(ii) can be cared for by the resident without assistance.

(3) The facility shall ensure records of observations, treatments and progress notes are entered in the resident record and that services are in accordance with the resident health care plan.

(4) No over the counter products such as creams, lotions, ointments, soaps, iodine or alcohol shall be put on an open pressure or stasis wound unless ordered by the resident's practitioner after an appropriate evaluation of the wound.

(5) Evidence the facility is meeting those resident's identified as a greater risk for skin care needs include the following outcomes for residents:

(a) the facility has identified those residents who are at greater risk of developing a pressure or stasis ulcer. Primary risk factors include but are not limited to:

(i) continuous urinary incontinence or chronic voiding dysfunction;

(ii) severe peripheral vascular disease (poor circulation to the legs);

(iii) diabetes;

(iv) chronic bowel incontinence;

(v) sepsis;

(vi) terminal cancer;

(vii) decreased mobility or confined to bed or chair;

(viii) edema or swelling of the legs;

(ix) chronic or end stage renal, liver or heart disease;

- (x) CVA (stroke);
 - (xi) recent surgery or hospitalization;
 - (xii) any resident with skin redness lasting more than 30 minutes after pressure is relieved from a bony prominence, such as hips, heels, elbows or coccyx, is at extremely high risk in that area; and
 - (xiii) malnutrition/dehydration whether secondary to poor appetite or another disease process.
- (b) direct care staff have received training related to maintenance of skin integrity and the prevention and care of pressure sores from a licensed health care professional who is trained to care for that condition;
- (c) the resident's practitioner has diagnosed the condition and ordered treatment;
- (d) the resident is kept clean and dry;
 - (e) the resident is provided clean and dry bed linens;
 - (f) the resident is kept hydrated;
 - (g) the resident is turned and repositioned;
 - (h) the wound is getting smaller;
 - (i) there is no evidence of infection;
 - (j) wound bed is moist, not dried out or scabbed over;
 - (k) the resident has less restriction of movement; and
 - (l) the resident's pain level has diminished. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02.)

Rules 81 through 83 reserved

37.106.2884 SEVERE COGNITIVE IMPAIRMENT: CATEGORY B
(REPEALED) (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02; REP, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2885 ADMINISTRATION OF MEDICATIONS: CATEGORY B

(1) Written, signed practitioner orders shall be documented in all category B resident facility records by a legally authorized person for all medications and treatments which the facility is responsible to administer. Medication or treatment changes shall not be made without a practitioner's order. Order changes obtained by phone must be confirmed by written, signed orders within 21 days.

(2) All medications administered to a B resident shall be administered by a licensed health care professional or by an individual delegated the task under the Nurse Practice Act and ARM Title 8, chapter 32, subchapter 17. Those category B residents, that are capable of self administration shall be given the opportunity and encouraged to do so.

(3) Residents with a standing PRN medication order, that cannot determine their own need for the medication by making a request to self-administer the medication or in the case of the cognitively impaired cannot respond to caretaker's suggestions for over-the-counter PRN pain medications shall:

(a) have the medication administered by a licensed health care professional after an assessment and the determination of need has been made; and

(b) be classified as a B resident because a nursing decision to determine the resident's need for the medication was required.

(4) Medication and treatment orders shall be carried out as prescribed. The resident or the person legally authorized to make health care decisions for the resident has the right to consent to, or refuse medications and treatments. The practitioner shall be notified if a resident refuses consent to an order. Subsequent refusals to consent to an order shall be reported as required by the practitioner.

(5) Only the following individuals may administer medications to residents:

(a) a licensed physician, physician's assistant, certified nurse practitioner, advanced practice registered nurse or a registered nurse;

(b) licensed practical nurse working under supervision;

(c) an unlicensed individual who is either employed by the facility or is working under third party contract with a resident or resident's legal representative and has been delegated the task under ARM Title 8, chapter 32, subchapter 17; and

(d) a person related to the resident by blood or marriage or who has full guardianship. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02.)

37.106.2886 MEDICATIONS: RECORDS AND DOCUMENTATION:
CATEGORY B (1) An accurate medication record for each resident shall be kept of all medications, including over-the-counter medications, administered by the facility to that resident.

(2) The record shall include:

(a) name of medication, reason for use, dosage, route and date and time given;

(b) name of the prescribing practitioner and their telephone number;

(c) any adverse reaction, unexpected effects of medication or medication error, which must also be reported to the resident's practitioner;

(d) allergies and sensitivities, if any;

(e) resident specific parameters and instructions for PRN medications;

(f) documentation of treatments with resident specific parameters;

(g) documentation of doses missed or refused by resident and why; and

(h) initials of the person administering the medication and treatment at the time of administration.

(3) The facility shall maintain legible signatures of staff who administer medication or treatment, either on the medication administration record or on a separate signature page.

(4) A medication record need not be kept for those residents for whom written authorization has been given by their physician or practitioner to keep their medication in their rooms and to be fully responsible for taking the medication in the correct dosage and at the proper time. The authorization must be renewed on an annual basis.

(5) The facility shall maintain a record of all destroyed or returned medications in the resident's record or closed resident file in the case of resident transfer or discharge. (History: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226 and 50-5-227, MCA; NEW, 2002 MAR p. 3638, Eff. 12/27/02.)

Rules 87 through 90 reserved

37.106.2891 ADMINISTRATOR QUALIFICATIONS: CATEGORY C

(1) An assisted living category C facility must be administered by a person who meets the conditions of ARM 37.106.2814 and has:

(a) three or more years experience in working in the field of geriatrics or caring for disabled residents in a licensed facility; or

(b) a documented combination of education and training that is equivalent to the experience required in (1), as determined by the department.

(2) At least eight of the 16 hours of annual continuing education the administrator must complete under ARM 37.106.2814(3) shall pertain to caring for persons with severe cognitive impairments. (History: Sec. 50-5-103, 50-5-223 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226, 50-5-227 and 50-5-228, MCA; NEW, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2892 DIRECT CARE STAFF: CATEGORY C (1) In addition to meeting all other requirements for direct care staff stated in this subchapter, assisted living category C facility direct care staff must receive additional documented training in:

(a) the facility or unit's philosophy and approaches to providing care and supervision for persons with severe cognitive impairment;

(b) the skills necessary to care for, intervene and direct residents who are unable to perform activities of daily living;

(c) techniques for minimizing challenging behavior including:

(i) wandering;

(ii) hallucinations, illusions and delusions; and

(iii) impairment of senses;

(d) therapeutic programming to support the highest possible level of resident function including:

(i) large motor activity;

(ii) small motor activity;

(iii) appropriate level cognitive tasks; and

(iv) social/emotional stimulation;

(e) promoting residents' dignity, independence, individuality, privacy and choice;

(f) identifying and alleviating safety risks to residents;

(g) identifying common side effects and untoward reactions to medications; and

(h) techniques for dealing with bowel and bladder aberrant behaviors.

(2) Staff must remain awake, fully dressed and be available in the facility or on the unit at all times to provide supervision and care to the resident as well as to assist the residents in evacuation of the facility if a disaster occurs. (History: Sec. 50-5-103, 50-5-223 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226, 50-5-227 and 50-5-228, MCA; NEW, 2004 MAR p. 1146, Eff. 5/7/04.)

Rules 93 and 94 reserved

37.106.2895 HEALTH CARE PLAN: CATEGORY C (1) Within 21 days of admission of a resident to an assisted living category C facility, a resident certification must be conducted, and a written health care plan shall be developed which meets the requirements of ARM 37.106.2875, and which also includes detailed assessment, therapeutic management and intervention techniques for the following behaviors and resident needs:

- (a) memory;
- (b) judgement;
- (c) ability to care for oneself;
- (d) ability to solve problems;
- (e) mood and character changes;
- (f) behavioral patterns;
- (g) wandering; and
- (h) dietary needs. (History: Sec. 50-5-103, 50-5-223 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226, 50-5-227 and 50-5-228, MCA; NEW, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2896 DISCLOSURES TO RESIDENTS: CATEGORY C

(1) Each assisted living category C facility or unit must, prior to admission, inform the resident's legal representative in writing of the following:

(a) the overall philosophy and mission of the facility regarding meeting the needs of residents afflicted with severe cognitive impairment and the form of care or treatment offered;

(b) the process and criteria for move-in, transfer and discharge;

(c) the process used for resident assessment;

(d) the process used to establish and implement a health care plan, including how the health care plan will be updated in response to changes in the resident's condition;

(e) staff training and continuing education practices;

(f) the physical environment and design features appropriate to support the functioning of cognitively impaired residents;

(g) the frequency and type of resident activities;

(h) the level of involvement expected of families and the availability of support programs; and

(i) any additional costs of care or fees.

(2) The facility must obtain from the resident's legal representative a written acknowledgment that the information specified in (1) was provided. A copy of this written acknowledgment must be kept as part of the permanent resident file. (History: Sec. 50-5-103, 50-5-223 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226, 50-5-227 and 50-5-228, MCA; NEW, 2004 MAR p. 1146, Eff. 5/7/04.)

Rule 97 reserved

37.106.2898 REQUIREMENTS FOR SECURED UNITS: CATEGORY C

(1) In addition to meeting all other requirements for assisted living facilities stated in this subchapter, if a secured distinct part or locked unit within a category C assisted living facility is designated for the exclusive use of residents with severe cognitive impairment, the facility must:

(a) staff the unit with direct care staff at all times there are residents in the unit;

(b) provide a separate dining area, at a ratio of 30 square feet per resident on the unit; and

(c) provide a common day or activities area, at a ratio of 30 square feet per resident on the unit. The dining area listed in (1)(b) or day rooms, sun porches and common areas accessible to all residents, may serve this purpose. (History: Sec. 50-5-103, 50-5-223 and 50-5-227, MCA; IMP, Sec. 50-5-225, 50-5-226, 50-5-227 and 50-5-228, MCA; NEW, 2004 MAR p. 1146, Eff. 5/7/04.)

Subchapter 29

Restraints, Safety Devices, Assistive Devices,
and Postural Supports

37.106.2901 RULE APPLICABILITY (1) The provisions of the rules in this subchapter that govern the use of restraints do not apply to a category A personal care facility as defined in 50-5-227(2)(a), MCA, because such a facility is prohibited by law from accepting and serving any resident who is in need of medical, chemical or physical restraint. (History: Sec. 50-5-103, 50-5-226, 50-5-227 and 50-5-1205, MCA; IMP, Sec. 50-5-103, 50-5-226, 50-5-227, 50-5-1202 and 50-5-1203, MCA; NEW, 2002 MAR p. 3159, Eff. 11/15/02.)

37.106.2902 DEFINITIONS The following definitions, in addition to those contained in 50-5-1202, MCA, apply to this chapter:

(1) "Assistive device" means any device whose primary purpose is to maximize the independence and the maintenance of health of an individual who is limited by physical injury or illness, psychosocial dysfunction, mental illness, developmental or learning disability, the aging process, cognitive impairment or an adverse environmental condition. If the device is primarily used to restrict an individual's movement, it is considered a safety device or restraint rather than an assistive device.

(2) "Licensed health care professional" means a physician, a physician assistant-certified, a nurse practitioner or a registered or practical nurse licensed in the state of Montana.

(3) "Medical symptom", as defined in 50-5-1202, MCA, means an indication of a physical or psychological condition or of a physical or psychological need expressed by the patient. For example, a concern for the resident's physical safety by any person listed in 50-5-1201(1), MCA, or a resident's fear of falling may constitute a medical symptom.

(4) "Postural support" means an appliance or device used to achieve proper body position and balance, to improve a resident's mobility and independent functioning, or to position rather than restrict movement, including, but not limited to, preventing a resident from falling out of a bed or chair. A postural support does not include tying a resident's hands or feet or otherwise depriving a resident of their use.

(5) "Restraint" means any method (chemical or physical) of restricting a person's freedom of movement that prevents them from independent and purposeful functioning. This includes seclusion, controlling physical activity, or restricting normal access to the resident's body that is not a usual and customary part of a medical diagnostic or treatment procedure to which the resident or the authorized representative has consented.

(6) "Safety devices", as defined in 50-5-1202, MCA, means side rails, tray tables, seat belts and other similar devices. The department interprets that definition to mean that a safety device is used to maximize the independence and the maintenance of health and safety of an individual by reducing the risk of falls and injuries associated with the resident's medical symptom. (History: Sec. 50-5-103, 50-5-226, 50-5-227 and 50-5-1205, MCA; IMP, Sec. 50-5-103, 50-5-226, 50-5-227, 50-5-1202 and 50-5-1203, MCA; NEW, 2002 MAR p. 3159, Eff. 11/15/02.)

Rule 03 reserved

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37.106.2904 USE OF RESTRAINTS, SAFETY DEVICES, ASSISTIVE DEVICES, AND POSTURAL SUPPORTS (1) The application or use of a restraint, safety device or postural support is prohibited except to treat a resident's medical symptoms and may not be imposed for purposes of coercion, retaliation, discipline or staff convenience.

(2) A restraint may be a safety device when requested by the resident or the resident's authorized representative or physician to reduce the risk of falls and injuries associated with a resident's medical symptoms and used in accordance with 50-5-1201, MCA.

(3) To the extent that a resident needs emergency care, restraints may be used for brief periods:

(a) to permit medical treatment to proceed unless the health care facility has been notified that the resident has previously made a valid refusal of the treatment in question; or

(b) if a resident's unanticipated violent or aggressive behavior places the resident or others in imminent danger, in which case the resident does not have the right to refuse the use of restraints. In this situation:

(i) the use of restraints is a measure of last resort to protect the safety of the resident or others and may be used only if the facility determines and documents that less restrictive means have failed;

(ii) the size, gender, physical, medical and psychological condition of the resident must be considered prior to the use of a restraint;

(iii) a licensed nurse shall contact a resident's physician for restraint orders within one hour of application of a restraint;

(iv) the licensed nurse shall document in the resident's clinical record the circumstances requiring the restraints and the duration; and

(v) a restrained resident must be monitored as their condition warrants, and restraints must be removed as soon as the need for emergency care has ceased and the resident's safety and the safety of others can be assured.

(4) In accordance with the Montana Long-Term Care Residents' Bill of Rights, the resident or authorized representative is allowed to exercise decision-making rights in all aspects of the resident's health care or other medical regimens, with the exception of the circumstances described in (3)(b).

(5) Single or two quarter bed rails that extend the entire length of the bed are prohibited from use as a safety or assistive device; however, a bed rail that extends from the head to half the length of the bed and used primarily as a safety or assistive device is allowed.

(6) Physician-prescribed orthopedic devices used as postural supports are not considered safety devices or restraints and are not subject to the requirements for safety devices and restraints contained in these rules.

(7) Whenever a restraint, safety device, or postural support is used that restricts or prevents a resident from independent and purposeful functioning, the resident must be provided the opportunity for exercise and elimination needs at least every two hours, or more often as needed, except when a resident is sleeping.

(8) All methods of restraint, safety devices, assistive devices and postural supports must be properly fastened or applied in accordance with manufacturer's instructions and in a manner that permits rapid removal by the staff in the event of fire or other emergency. (History: Sec. 50-5-103, 50-5-226, 50-5-227 and 50-5-1205, MCA; IMP, Sec. 50-5-103, 50-5-226, 50-5-227, 50-5-1201, 50-5-1202 and 50-5-1204, MCA; NEW, 2002 MAR p. 3159, Eff. 11/15/02.)

37.106.2905 DOCUMENTATION IN RESIDENT'S MEDICAL RECORDS

(1) Prior to the use of a restraint or safety device, the following items must be included in the resident's record:

(a) a consent form signed by the resident or authorized representative that includes documentation that:

(i) the resident or the resident's authorized representative was given a written explanation of the alternatives and any known risks associated with the use of the restraint or safety device;

(ii) cites any pre-existing condition that may place a patient at risk of injury; and

(b) written authorization from the resident's primary physician that specifies the medical symptom that the restraint or safety device is intended to address and the type of circumstances and duration under which the restraint or safety device is to be used.

(2) When a restraint or safety device is used, the following items must be documented in the resident's record:

(a) frequency of monitoring in accordance with documented facility policy;

(b) assessment and provision of treatment if necessary for skin care, circulation and range of motion; and

(c) any unusual occurrences or problems.

(3) During a quarterly re-evaluation, a facility must consider:

(a) using the least restrictive restraint or safety device to restore the resident to a maximum level of functioning;

(b) causes for the medical symptoms that led to the use of the restraint or safety device; and

(c) alternative safety measures if a restraint or safety device is removed. Before removing a restraint or safety device, the resident or the authorized representative and the attending physician must be consulted. (History: Sec. 50-5-103, 50-5-226, 50-5-227 and 50-5-1205, MCA; IMP, Sec. 50-5-103, 50-5-226, 50-5-227, 50-5-1201, 50-5-1203 and 50-5-1204, MCA; NEW, 2002 MAR p. 3159, Eff. 11/15/02.)

Rules 06 and 07 reserved

37.106.2908 STAFF TRAINING (1) Restraints, safety devices or postural supports may only be applied by staff who have received training in their use, as specified below and appropriate to the services provided by the facility.

(2) Staff training shall include, at a minimum, information and demonstration in:

(a) the proper techniques for applying and monitoring restraints, safety devices or postural supports;

(b) skin care appropriate to prevent redness, breakdown and decubiti;

(c) active and passive assisted range of motion to prevent joint contractures;

(d) assessment of blood circulation to prevent obstruction of blood flow and promote adequate circulation to all extremities;

(e) turning and positioning to prevent skin breakdown and keep the lungs clear;

(f) potential risk for residents to become injured or asphyxiated because the resident is entangled in a bed rail or caught between the bed rail and mattress if the mattress or mattress pad is ill-fitted or is out of position;

(g) provision of sufficient bed clothing and covering to maintain a normal body temperature;

(h) provision of additional attention to meet the physical, mental, emotional and social needs of the resident; and

(i) techniques to identify behavioral symptoms that may trigger a resident's need for a restraint or safety device and to determine possible alternatives to their use. These include:

(i) observing the intensity, duration and frequency of the resident's behavior;

(ii) identifying patterns over a period of time and factors that may trigger the behavior; and

(iii) determining if the resident's behavior is:

(A) new or if there is a prior history of the behavior;

(B) the result of mental, emotional, or physical illness;

(C) or a radical departure from the resident's normal personality.

(3) Training described in (2) must meet the following criteria:

(a) training must be provided by a licensed health care professional or a social worker with experience in a health care facility; and

(b) a written description of the content of this training, a notation of the person, agency, organization or institution providing the training, the names of staff receiving the training, and the date of training must be maintained by the facility for two years.

(4) Refresher training for all direct care staff caring for restrained residents and applying restraints, safety devices or postural supports must be provided at least annually or more often as needed. The facility must:

(a) ensure that the refresher training encompasses the techniques described in (2) of this rule; and

(b) for two years after each training session, maintain a record of the refresher training and a description of the content of the training. (History: Sec. 50-5-103, 50-5-226, 50-5-227 and 50-5-1205, MCA; IMP, Sec. 50-5-103, 50-5-226, 50-5-227, 50-5-1204 and 50-5-1205, MCA; NEW, 2002 MAR p. 3159, Eff. 11/15/02.)

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